THE LAW OF DEVISES, LAST WILLS, AND REVOCATIONS.

THE LAW OF DEVISES, LAST WILLS, AND REVOCATIONS.

By the late Lord Chief Baron Sir Geoffrey GILBERT.

To which is added,

A Select Number of WILLS, drawn by Men EMINENT in the PROFESSION.

Ineſt ſua gratia parvis.

The fourth Edition, reviſed, corrected, and improved.

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PREFACE.

PREFATORY *diſcourſes* (eſpecially in ſyſtems of ſcience) often pre-occupate,—ſometimes prejudice, or pervert the judgment of the reader: and doubtleſs, whoever attentively peruſes the introduction which the author himſelf prefixed to this *treatiſe*, will readily and juſtly conclude, that an additional preface is a ſupererogation, and of little or no uſe, either to illuſtrate the author, or direct the reader. I ſhall therefore in this place inſert only a few words; firſt, with regard to the author,—next to the *work* itſelf.

As to the author, he was perfectly qualified for the work he has here undertaken, as being a gentleman of exquiſite parts and learning,—of indefatigable induſtry and application,—for many years a conſtant attendant on the courts, eſpecially the courts of equity, of whoſe proceedings he was always an exact obſerver, as well as a careful collector, and faithful relator;—one, in whoſe collections, reports and ſyſtems of law, already publiſhed, appear an exquiſite ſolidity of *judgment*, as well as utility of *matter*, and perſpicuity of *method*. His merit ſoon advanced him to preſide in thoſe courts where the matters treated of in this book are more particularly cogniſable.

As to the work, it will appear to every attentive reader, to be one of the moſt uſeful and neceſſary,—as well as the moſt regular and exact, of its kind: as to its *utility*,—it may be obſerved, that as no part of the law can give us more extended ideas,—or conduce more to our temporal benefit, than the *legal methods* of transferring or diſpoſing property; ſo thoſe *methods* being by our author properly diſtributed into two kinds,—*alienation* in life, or by *deviſe* at death; the latter of theſe is here treated of with ſuch

ſuch perſpicuity, as a ſubject which, in point of utility or intereſt, does, or may, concern *every perſon* capable of giving or taking *lands* by *deviſe*,—which in general includes *all mankind.*

The method is truly *logical* or *analytical*, and the whole doctrine of *deviſes* is diſtributed under *nine heads*; all particularly and methodically treated of *at large* in the ſubſequent ſections, wherein the caſes found in our reports, or which fell within the author's obſervation, as neceſſary to illuſtrate or explain, are introduced and applied.

As to the arguments of Lord *Holt*, in the Caſe of *Bunker* and *Cook*, and of Lord *Trevor*, in that of *Arthur* and *Bockenham*,—the reader may be aſſured, that the ſame were at *firſt* taken by our author, as they were delivered in the reſpective courts, and were afterwards added by him to this treatiſe; for they directly tend to illuſtrate ſeveral particulars. And the editor of this treatiſe, finding the ſame arguments to have been here collected, and penn'd in a more exact manner than they have hitherto been publiſhed, cannot conceive it any injury to the publick, to give them here a republication.

It has been thought adviſeable, for the reader's eaſe and benefit, to give him an *alphabetical table* (by way of double entry) of the names of ſuch authorities which are cited by our author, and by him made uſe of in the compoſing this work.

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THE

THE

LAW

OF

DEVISES, REVOCATIONS,

AND

LAST WILLS,

SINCE all were by nature in a ſtate of equality, independant on one another, they muſt have had the ſame right to all things neceſſary for the ſupport of life—— but, when by their induſtry, they took any thing out of the common ſtock, it thereby became their own; no one could diſpoſſeſs them of it, without manifold injuſtice; for they could not appropriate to themſelves the fruits of the earth without labour, which ſurely nobody would pretend any right to, in this natural ſtate of equality. Hence we may infer, that every man had an abſolute property in thoſe things which he had appropriated by his induſtry; but becauſe all men

Doct. and Stud. dial. 2. c. 22.

could not eaſily provide themſelves with every neceſſary of life, (for every place did not produce all things for clothing, food, &c.) men were apt to ſeize what their neighbours poſſeſſed, or to exchange the productions of their ſeveral ſoils; therefore, to prevent the diſorders of the former, it was judged moſt reaſonable to eſtabliſh the latter, by which *men were allowed to transfer any ſhare of their fruits or poſſeſſions*, to procure ſomething more ſerviceable, which they wanted.

Now the ways of transferring property muſt be either by *alienation* in the *life* of the poſſeſſor, or by *teſtament* after his *death*; that is, the occupier having an *abſolute* power over his *own* acquiſitions may ſo entirely diſpoſe of them, that he ſhall not during his life retain any manner of right, or title, to the things which were before his own, or to the uſe of them;—or, he may declare by his will, *who ſhall ſucceed him in his poſſeſſions after his death*, which till then is revocable; reſerving in the mean time, the right of occupancy, and enjoying the profits. The former power and privilege ariſeth from the *full* property; for ſince *that* enables a man to diſpoſe of his own *as he pleaſes*, it ſeems the principal part of that ability, that he may, if he thinks proper, transfer any part to another, and ſo provide himſelf with ſomething more ſerviceable, or at leaſt engage a friend by a FREE GIFT. The *latter* method of transferring property has not been ſo *eaſily* allowed; for *it has been diſputed, whether* TESTAMENTS *owe their* ORIGI-

NAL

NAL *to a* NATURAL *or* POSITIVE LAW. But ſincethings, (over which the property was firſt eſtabliſhed,) are *intended only for the uſes of men* in this life, *they* thought it ſufficient to *that* end, to allow the occupier the command of his poſſeſſions *during his life*, but *that the management of what belonged to the dead ſhould be left to the care of the living.*

But on the other ſide, if we conſider that men *are obliged* to take particular care of their children, as well as of others allied to them in blood, and that it is not ſufficient (for the peace of ſociety) to introduce ſuch a dominion of things, as would turn only to the *preſent* uſe, (ſince this would create no leſs confuſion than the primitive community,) it will appear *neceſſary*, that the CONTINUANCE *of property ſhould* NOT *depend on any* FIXED *period of time, but be* INDEFINITE, and ſo paſs down, and be continued to others.

Beſides, this privilege is *a great encouragement to induſtry*, which muſt have contributed much to the peace of a ſtate of nature. For men were apt to extend their right to the common productions of the earth *too far*, and in their wants would eaſily perſuade themſelves that no appropriation would deprive them of it; therefore whatever could prevail on them to lay up the fruits of the earth, and prevent that rapine which the want of them produced, muſt of conſequence be *highly* reaſonable;—and what could be a greater motive than, (after a full enjoyment of them in this life,) *a free power*

to diſpoſe of them, to thoſe, whoſe intereſt and happineſs ought to be our greateſt concern? But however reaſonable this NATURAL notion may ſeem of transferring property by *teſtament*, it was *not* admitted into the *feudal* law; the reaſons whereof will appear, if we examine into the nature of the old *feuds* and *tenures*.

A *feud* (*a*) was at firſt no more than the right which the vaſſal had *to take the* PROFITS of his lord's lands, *rendering unto him ſuch feudal duties and ſervices as belong to military tenure;* ſo that the tenant had only the *uſe* of the land, and the PROPERTY *ſtill continued in the lord.* Thoſe feuds the tenants had at firſt but *at the will of the lord*, and afterwards they were continued to the tenant *during his life;* and while they were thus limited, it is no wonder they were *not* ſuffered to diſpoſe of them by teſtament, for *that* does not take effect till after the death of the teſtator, at which time the tenant's *intereſt* in the feud ceaſed, and his eſtate was determined; therefore he could not diſpoſe of that he had no right to: nor will this reſtriction ſeem unreaſonable, when the feud came to be hereditary and perpetual, if we make a further inquiry into the ſervices and duties that every feudal tenant was *obliged* to pay his lord.

Among others, *Spelman* tells us, there were DEFENCE for the lord's perſon, *counſel*

(*a*) The word *feudum* was not known here until about the year 1000. *Somner's Gavelkind*, 102.

and

and *advice*; for the tenant was obliged every three weeks to attend the lord's court, and direct him as the cauſes required; and the profit of *ward*, *marriage* and *relief* as they fell. Theſe I take to have been the moſt beneficial, and of the greateſt conſequence to the lord. He muſt of neceſſity have been deprived of theſe, had this diſpoſition of the feud *by teſtament* been allowed; for *by this means a ſtranger might be admitted into the poſſeſſion of the feud, who might be unable to perform the ſervices*; the ability of the latter being no leſs neceſſary to aſſiſt the lord in his courts, than the vigor of the former to defend and protect him in the field.

And if we conſider the nature of ward, marriage, and relief, we ſhall find the lord by the ſame means diſappointed of thoſe profits; for at the death of the tenant, the heir was either within age, (then the profits of ward and marriage accrued to the lord;) or, he was of full age, and then, that of relief became due; for on the death of the tenant, the land lay empty and fell into the lord's hands, and the taking it out of the lord's hands was called *relevium*, (*relief*) (*a*), which was *in the nature of a* *Co. Lit.* 76. *a.*

(*a*) *Relevium* is derived from the *Latin* word *relevare*; and the ancient ſages of the law give this reaſon, *Quia hæreditas quæ jacens fuit per anteceſſoris deceſſum, relevatur in manus hæredum, et propter factam relevationem facienda erit ab hærede quædam præſtatio quæ dicitur relevium.* Bract. l. 2. c. 36. fo. 84. Fleta l. 1. c. 10. Brit. *c.* 69, 70. *Ockham de differentiis releviorum* Co. Lit. 69. b. 76. a. 83. a. In *Domeſday* it is called *relevamentum* and *relevatio.* See 13 *Eliz. c.* 5.

new purchaſe; and it was thought reaſonable that the lord ſhould have the *education* of the heir, in order to inſtruct him in the uſual ſervices of the feud, it being no leſs the intereſt of the publick than the lord, to have them duly performed; but had this way of transferring the feud been admitted, it would have been in the power of every tenant to deprive the lord of thoſe benefits, by appointing a ſtranger to ſucceed him.

Beſides, this way of conveyance wanted that *ſolemnity*, which the feudiſts thought neceſſary to eſtabliſh in transferring lands, that if at any time a diſpute ſhould ariſe, it might be the eaſier determined by the *pares comitatus*, who were witneſſes to that notorious and publick manner of conveying by livery; and for that reaſon I believe *copyhold* land was taken to be *out* of the ſtatute of 32 *H.* 8. *c.* 1. For the ſurrender, which is required, as well in deviſes, as in other alienations, *anſwers the notoriety of livery and ſeiſin*, conſequently out of the reaſon of the prohibition of the feudal law.

Black. Com. 2 *V.* 327, *&c.*

Thus the law continued till the invention of uſes, which were firſt found out by the clergy, to evade the ſtatutes of mortmain; for when thoſe acts prohibited them from making any further purchaſes of lands, they introduced the diſtinction of the civil law between the *uſus fructus* and the property; and as they generally ſat in chancery, where theſe uſes were ſolely cognizable, ſo they ſuffered them to be diſpoſed of by will, as the *uſus fructus* is by

by the rules of the civil law; rightly judging, that *men are moſt liberal when they can enjoy their poſſeſſions no longer*, therefore at their death would chooſe to diſpoſe of them to thoſe who only could promiſe them happineſs in another world.

But amongſt the many miſchiefs which followed this contrivance of uſes, the feudal lord was often deprived of the ſervices and profits of his feud; and though the ſtatute of *H.* 7. reſtored the ward of *ceſtuy que uſe* his heir, with the relief to the ſaid lord, and altho' many other acts made proviſion againſt the other miſchiefs; yet they were ſtill continued, principally as the *Doctor & Student* obſerves, for the ſake of this power of diſpoſing them by will; but that was entirely taken away by the ſtatute of 27 *H*, 8. of uſes, which transferred the poſſeſſion of the feoffees to *ceſtuy que uſe*, and *ſo merged the uſe*, but the land itſelf could not longer be conveyed by teſtament, but by alienation in the life of the proprietor.

Doct. & Stud. dial. 2. *c.* 22.

The people diſpleaſed to find themſelves ſtrip'd of a privilege they had ſo long enjoyed, grew uneaſy under this alteration and reſtriction; therefore the parliament of 32 *H.* 8. was the eaſier prevailed on to eſtabliſh that manner of conveyance *by will*, ſince they found it might be done with ſmall detriment to the military tenures, which were at that time in their declenſion.

It is of no conſequence to note the particular clauſes in that ſtatute, and the 34 *H.* 8. which relates to thoſe tenures, for, as they are aboliſhed, it would be more a matter of ſpeculation and curioſity, than of uſe. I ſhall confine myſelf to that general clauſe which concerns *ſoccage* lands, and *impowers every perſon* having a ſole eſtate in fee-ſimple, or ſeiſed in coparcenary, or in common in any lands, *&c.* in poſſeſſion, reverſion, or remainder, *to will or deviſe* them, or any rent, common or other profit out of them, at his pleaſure, to any perſon, *except bodies politick and corporate.*

That we may the eaſier comprehend the ſeveral points of law which may be reduced to this head *deviſe*, it will be proper to obſerve, that—the word *deviſe*, is ſuppoſed to be derived from the *French*, *deviſer*, (to divide, or, ſort into parcels); but in a legal ſignification it is properly where a man *gives* away any lands or tenements *by will in writing*.—He who gives is called the *deviſor;* and he to whom the lands are given, the *deviſee.* A *deviſe* is *not* in conſtruction of law, a deed; only, *an inſtrument* by which lands are conveyed. And anciently where lands were deviſable, it was by cuſtom *only;* for, by the common law, (in favour of heirs,) no lands or tenements in *fee*-SIMPLE were deviſable by will; nor could they be transferred but by ſolemn livery and ſeiſin;—matter of record,—or, ſufficient deed or writing. 1 *Inſt.* 111. 2 *Inſt.* 386. But now it is otherwiſe by *Stat.*

32 *Hen.* 8. c. 1. And ſee 34 & 35 *Hen.* 8. *c.* 5.

N. B. Notwithſtanding the doctrine laid down above, it hath been ſaid, that *words of* RECOMMENDATION *and* DESIRE in a *will* are always *held* to be a *deviſe;* as where the teſtator gives a legacy to one, willing him to do ſuch a thing, *&c. Prec. Canc.* 201.

This being premiſed, it will now be neceſſary, *Firſt*, to conſider,

Who may deviſe land, and to whom it may be deviſed, &c.

Secondly, What words paſs a FEE *in a will.*

Thirdly, What paſs an eſtate TAIL, *or for* LIFE.

Fourthly, Of executory deviſes, contingent remainders, and croſs remainders.

Fifthly, Of terms for years, and INCERTAIN *intereſt.*

Sixthly, Of deviſes by IMPLICATION.

Seventhly, What circumſtances are neceſſary by 32. *H.* 8. and 19 *Car.* 2.

Eighthly, Of revocations.

Ninthly, Of void deviſes.

1ſt. *Who may deviſe land, and to whom it may be deviſed*, &c.

6 *Co.* 16. *b.* 1 *Rol. Abr.* 608.——*(a) A conveyance by will was a privilege anciently allowed by the civil law only to perſons* in extremis, *who had not time nor aſſiſtance neceſſary to make a formal alienation, and was* chiefly intended for military men, *who were always ſuppoſed to be under thoſe circumſtances, therefore the ceremonies and number of witneſſes required of others were* diſpenſed *with* as to ſoldiers, *though now the rules for military teſtaments are allowed in moſt caſes; but as to lands and houſes, our law gave no liberty of diſpoſing thereof by will, except in certain boroughs and places where ſuch* cuſtom had obtained time out of mind. *Show. Caſ. in Parl.* 147. Sir *Edward Hungerford* v. *Noſworthy.* (*b*) *it is not ſufficient that they be able to anſwer to* familiar *and* uſual *queſtions.* Cro. Jac. 497. 6 *Co.* 23. a.

THE (*a*) ſtatutes of 32 *Hen.* 8. *c.* 1. and 34 & 35 *H.* 8. *c.* 5. give this power to all perſons, except infants, ideots, feme coverts, and perſons of (*b*) *non ſanæ memoriæ*; and *every* perſon may be a deviſee, within theſe ſtatutes, except bodies politick and corporate; theſe were excepted, and becauſe they never anſwered the feudal ſervices, and were reſtrained from purchaſing any lands by ſtatute of mortmain.

43 *Eliz. c.* 4. *Hob.* 136. *Flood's* caſe. 1 *Lev.* 284. S. P.

Yet, ſince the ſtatute of charitable uſes, it has been held that a deviſe to the principal, fellows and ſcholars of *Jeſus* college in *Oxon* and their ſucceſſors, for maintenance of a ſcholar, *is good*, tho' ſuch deviſe had been mortmain by the ſtatute of wills.

2 *Vern.* 104.

Altho' a wife, (by reaſon of the ſubjection ſhe is under to her huſband,) *cannot make a will*, yet a woman, whoſe huſband is baniſhed

baniſhed for life by act of parliament, may make a will and act in every thing as a feme ſole, *as if the huſband was dead.* (*a*)

A huſband

(*a*) As to this point it may be neceſſary to obſerve, that death is either *civil*, or *natural*. The civil death commences, if any man be baniſhed the realm (*Co. Lit.* 133) by the proceſs of the common law, or enters into religion; that is, goes into a monaſtery, and there becomes a monk profeſſed: in which caſes HE IS ABSOLUTELY DEAD IN LAW, and HIS NEXT HEIR SHALL HAVE HIS ESTATE. For, by ſuch proſcription, he is entirely cut off from ſociety; and ſuch a monk, upon his profeſſion, renounces ſolemnly all ſecular concerns: and beſides, as the popiſh clergy claimed an exemption from the duties of civil life and the commands of the temporal magiſtrate, the genius of the *Engliſh* law would not ſuffer thoſe perſons to enjoy the benefits of ſociety, who ſecluded themſelves from it, and refuſed to ſubmit to its regulations. [This was alſo a rule in the *feodal* law, *l. 2. tit. 21. deficit eſſe miles ſeculi, qui factus eſt miles Chriſti; nec beneficium pertinet ad eum qui non debet gerere officium.*] A monk was therefore accounted *civiliter mortuus*, and when he entered into religion might, like other dying men, make his teſtament and executors; or, if he made none, the ordinary might grant adminiſtration to his next of kin, as if he were actually dead inteſtate. And ſuch executors and adminiſtrators had the ſame power, and might bring the ſame actions for debts due to the religious, and were liable to the ſame actions from thoſe due *from* him, as if he were naturally deceaſed. *Lit. ſec.* 200. Nay, ſo far has this principle been carried, that when one was bound in a bond to an abbot and his ſucceſſors; and afterwards made his executors, and profeſſed himſelf a monk of the ſame abbey, and in proceſs of time was himſelf made abbot thereof, here the law gave him, *in the* CAPACITY *of* ABBOT, an action of debt *againſt* HIS OWN *executors* to recover the money due. *Co. Lit.* 133. In ſhort, a monk or religious, was ſo effectually dead in law, that a *leaſe* made

Cro. Eliz. 27. *Cro. Car.* 218, 376, 597. But it does *not* operate *as a will*, neither ought it to be proved in the ſpiritual court. 1 *Mod.* 211, 212. for the property paſſes from him to her legatee, and it is *his* gift. *Per Cur'*, 1 *Mod.* 211.——If the huſband once aſſents, he cannot *after* diſſent, and where he is bound by agreement to let her make a will, *his conſent ſhall be implied until the contrary appears.*——What will be ſufficient evidence of an aſſent, ſee 2 *Mod.* 172, 173.——What religious perſons were diſabled from making a will, *vide Rol. Abr.* 608.

A huſband may bind himſelf, by covenant, or bond, to permit his wife by will to diſpoſe of *legacies*, and this will be ſuch an appointment as the *huſband will be bound* to perform.

A feme covert *cannot* deviſe any of the goods which ſhe hath AS EXECUTRIX without the huſband's aſſent, or agreement after. 1 *Rol Abr.* 608.

Of things in action, or which ſhe hath by her huſband's conſent, ſhe may make a will, and this is properly a will *in law*, and ought to be proved in the ſpiritual court. 1 *Mod.* 211, 212.

A feme covert *executrix* may make a will *without* her huſband's aſſent. *Vide Moor* 340.

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made even to a THIRD perſon, during the life (*generally*) of one who afterwards became a monk, *determined* by ſuch his ENTRY INTO RELIGION:——for which reaſon leaſes, and other conveyances, FOR LIFE, are uſually made to have and to hold for the term of one's NATURAL life. 2 *Rep.* 48. *Co. Lit.* 132. But, even in the times of popery, the law of *England* took no cognizance of *profeſſion* in any *foreign* country, becauſe the fact could *not* be tried in our courts. *Co. Lit.* 132. Therefore, ſince the reformation, the diſability is held to be aboliſhed. 1 *Salk.* 162. See *Black. Com.* 1 *V* 132.

2. *And.*

2 *And.* 92. 1 *Rol. Abr.* 608, 912. 1 *Mod.* 211, 212.

If a man makes a will in his ſickneſs by the over importunity of his wife, *to the end he may be quiet*, this ſhall be ſaid to be a will made *by reſtraint*, and ſhall *not* be good. *Style* 427.

If a feme covert makes and publiſhes her will, and deviſes lands by it, and her huſband dies, the deviſe is void, becauſe the conſummation is founded upon the making and publiſhing, which are void acts. *Plow.* 344.

A. deviſed a houſe to *B. for life*, and after to truſtees to keep it in repair, and *beſtow the reſt of the profits on the reparation of highways*. This deviſe was held *good* againſt the heir at law, and the pariſhioners had a decree for the profits. 1 *Lev*, 284. *Hob.* 136. *Collins's* caſe.

A wife may be a deviſee, tho' not a grantee to the huſband; for as the grant had been void, becauſe *the huſband and wife are but one perſon in law;* ſo the deviſe is good, becauſe *it does not take effect till after the death of the huſband*, and then they are no more one perſon. *Co. Lit.* 112. 1 *Ro. Ab* 610.

It has been much doubted whether a deviſe to an infant *in ventre ſa mere* be good, becauſe *it* is not *in being* to take at the time of the death of the deviſor. And ſince by the deviſe they are to take *immediately* after the death of the deviſor, the freehold cannot be put in abeyance by the act of the parties. *Dyer* 303. *b.* 304. *a.* *Moor* 637. 1 *Lev.* 135.

Others held that a deviſe to an infant *in ventre ſa mere* is good, tho' the infant be not *Bro. Deviſe* 23 *Moor* 177. 1 *Lev.* 135. 1 *Ro. Ab.* 609

in eſſe at the death of the deviſor, and that the freehold ſhall not be in abeyance, but ſhall deſcend to the heir at law in the mean time.

1 *Sid.* 153. *Snow* v. *Tucker*, 1 *Lev.* 135.

But all agree to this, that a deviſe to an infant when he ſhall be born, is a good deviſe, and that *the freehold ſhall deſcend to the heir at law in the mean time.* (*a*)

Moor 637. *Church* v. *Wyat.* *Vide* 3 *Lev.* 408. 4 *Mod* 259, 282, and *Stat.* 10 & 11 *W.* 3. *c.* 16. *whereby proviſion is made for preſerving a remainder for the benefit of poſthumous children.*

So it is out of doubt, that if land be deviſed for life, the remainder to a poſthumous child, that this is a good *contingent* remainder, becauſe there is a perſon *in being* to take the particular eſtate. And if the contingent remainder veſts during the continuance of the particular eſtate, or *eo inſtanti* that it determines, it is good.

The law is now clear, that a deviſe to an infant *en ventre ſa mere* is good, tho' born after the teſtator's death, and he ſhall take by way of *executory* deviſe when *born.* *Per North* C. J. *T.* 1677. *Anon.* in *C. B.* 1 *Freem. Rep.* 293. A deviſe to an infant *en ventre ſa mere* was formerly held void, for that the infant not being born, there was

(*a*) For the teſtator could not intend that the infant ſhould take preſently, for he muſt firſt be *in rerum natura.* 2 *Mod.* 292. *Sid.* 153. *pl.* 2. *Finch Law* 34. And in this point the civil law agrees with ours. *Qui in utero ſunt, in jure civili intelliguntur in rerum natura eſſe, cum de eorum commodo agatur* *Ff.* 1. 5. 26. *Black. Com.* 1 *V.* 131.

but

no perſon to take; but it is now held good, becauſe the law ſhall imply that the deviſor did intend it to him *when the infant* ſhould *be born*, ſo that it works in the nature of an *executory* deviſe; but if it *appears* that the teſtator did not intend it to be executed preſently, there it ſhall wait. *Per North* C. J. *Hil.* 1677. *Taylor* and *Bydall*, 2 *Freem. Rep.* 243, 244.

A deviſe to an alien, alſo a deviſe to the heir of an alien, *is void*, becauſe an alien according to the policy of our law, can have no heir, either to inherit or take by purchaſe. 1 *Lev.* 59.—But a baſtard may be a deviſee of land, tho' a monk cannot. *Dyer* 323. *Black. Com.* 1 *V.* 372.

Tho' baſtards are not in conſtruction of law, *ſons*, yet if they have acquired that name *by reputation*, in common parlance they are. *T. Atk.* 1 *V.* 410.

A. deviſed a term for years to his daughter and her children, (ſhe *then* having *three*) and alſo to ſuch other children as ſhe ſhould have, and the children of thoſe children, ſhe having other children afterwards; held that the daughter and her three children took jointly each a fourth part, and that the after-born children took nothing, and that theſe were *words of limitation* and not of purchaſe; and it is as much for the wife's part, as tho' it had been given to her and the heirs of her body. *Alcock* and *Ellen*, 2 *Freem. Rep.* 186. *T. Atk.* 1. *V.* 413.

Deviſe of chattels for life, with remainder over, good, but if of ſmall value, and the caſe requires it, it may be otherwiſe. *Cooper* and *Williams*, *Prec' in Canc.* 71. *See T. Atk.* 1 *V.* 417.

A deviſe

A deviſe by *ceſtuy que truſt* in tail is good, without any further act to bar the right in tail. *Ibid.* 228.

A. hath iſſue *B.* and *C.*—*C.* deviſed to *B.* 1000*l.* and *after to the poſterity of A. for their education*, at which time *B.* was ſixty years of age, and *A* dead; the queſtion was, who ſhould have the 1000*l.* after *B.'s* death; and *per* lord K. the *lineal* heir, if there be any, ſhall take it under the word *poſterity*. But *B.* dying without iſſue, and there being no *lineal* heir of *A.* the *collateral* heir ſhall take it, but thoſe of the half-blood ſhall not. *Vide* 2 *Abr. Eq.* 290. *C.* 7.

R. L. deviſes to *R. M.* eldeſt ſon of his nephew *R. M.* and the firſt heirs male of his body, and in default of ſuch iſſue, *to the* SECOND SON *of the ſaid R. M.* and the heirs male of his body, and their iſſues; remainder over, *&c.* Theſe words, *the* SECOND *ſon of the ſaid R. M.* do *not* mean the ſecond ſon of the deviſee, but the ſecond ſon of the teſtator's nephew, *R. M. T. Atk.* 1 *V.* 411.

Deviſe to the firſt and eldeſt ſon, *not* heir at law to his father, is a good deviſe to the *ſecond* ſon. *Rep. temp. Hardw. per Annaly* 96.

One deviſes the ſurplus of his eſtate to his children and grandchildren, a grandchild *in ventre ſa mere* at the teſtator's death ſhall *not* take. *Secus* had it been to the children and grandchildren *living* at his death. *Northey* and *Strange*, 1 *Will. Rep.* 342. *Vide Prec. in Chan.* 470. *Gilb. Rep. in Eq.*

I. S. deviſes his perſonal eſtate to *A.* and *B.* and if either die without children, then

to

ſurvivor, this is good. *Hughes* and *Sayer*, 1 *Will. Rep.* 534.

A. deviſes 3000*l.* *to all his natural children of* B. *his ſon by* C. the baſtards born after the making of the will ſhall not take; nor the child *in ventre ſa mere*. *Metham* and *Duke of Devonſhire*, 1 *Will. Rep.* 530.

An *executory* deviſe of an eſtate of inheritance to a perſon unborn, when he ſhall attain the age of twenty-one years, is good, and no danger of a perpetuity. *Stephens* and *Stephens*. *Ca. in Eq. temp. Talbot* 228.

One deviſes lands (in caſe he leaves no ſon at the time of his death) to *I. S.*—the teſtator dies, leaving his wife *privement enſient* with a ſon, *this poſthumous ſon, is a ſon* LIVING AT THE TIME *of the teſtator's death*, and *I. S.* not intitled. Sir *Robert Burdet* and *Hopegood*, 1 *Will. Rep.* 486.

Deviſe of lands to truſtees, it truſt that if the eldeſt ſon of *A.* turn proteſtant, then to ſuch eldeſt ſon, is a *good* deviſe, as not being to a papiſt, but to a proteſtant. *Carteret* and *Carteret*, 2 *Will. Rep.* 132.

A papiſt cannot take a freehold or leaſehold eſtate by will, becauſe taking by will, is taking by *purchaſe*, and by the expreſs words of 11 & 12 *W.* 3. *c.* 4. a papiſt is *diſabled* to take by *purchaſe*; alſo terms for years are expreſly mentioned in the ſtatute. *Davers* and *Dewes*, 3 *Will. Rep.* 46.

Plaintiff claimed as contingent deviſee of a term for years, on *A.* the legatee's dying without iſſue; and the court was clearly of

opinion, that the deviſe over was good, the dying without iſſue being confined to a life *then* in being. *Opie* and *Godolphin*, *Prec. in Chan.* 549.

T. Atk. 1 *V.* 413.

A. poſſeſſed of a term deviſed it to *B.* and *C.* and if either of them died and left no iſſue of their reſpective bodies, then to *D.*—this held a good limitation to *D.* if *B.* or *C.* left no iſſue *at* their death. *Forth* and *Clapman*, 1 *Will. Rep.* 664.

I. S. poſſeſſed of a term, deviſed it to *B.* for life, remainder to his firſt, *&c.* ſon in tail ſucceſſively, remainder to his daughter, and if *B.* ſhouldhave neither ſon nor daughter, then to *C.*——*B.* dies never having had a ſon *or* daughter, the deviſe over to *C.* is good. *Stanley* and *Leigh*, 2 *Will. Rep.* 618.

Deviſe of a term to *A.* for life, remainder to the children *A.* ſhall leave at his death, and if the children of *A.* die without iſſue, then to *B.*——the children of *A.* die without leaving any iſſue living at the time of their death, this is a good deviſe over to *B.* *Atkinſon* and *Hutchinſon*, 3 *Will. Rep.* 258.

A deviſe to a papiſt above the age of eighteen is void; and if ſuch deviſee convey to a proteſtant purchaſor for a valuable conſideration, that conveyance is void alſo In *B. R. Fairclaim* on the demiſe of *Borlace* and *Newland*. *Vin. Abr.* tit. *Deviſe*, (I. 7.) *C.* 4.

2d. *What words paſs* A FEE *in a will.*

THE INTENT of the deviſor *will ſupply* the want of thoſe words which are neceſſary in deeds to convey an inheritance; as, if a man deviſe lands to another *in perpetuum*, or *in feodo ſimplici*, or to him and *his aſſigns* for ever, or to him and *his*; in theſe caſes A FEE-SIMPLE PASSES BY THE WILL; for it is evident by the deviſor's *intention*, that the gift ſhould continue beyond the life of the deviſee. *Co. Lit.* 9. *b.* 1 *Bulſt.* 222, 233. *Benal.* 11. *Jacob's Dict.* tit. FEE.

So if *A.* deviſes his lands to *B. to give, ſell or do, what he pleaſes* with, theſe words by the intent of the deviſor, convey, *a fee* to *B.* So a deviſe to one *& ſanguini ſuo* is a fee, becauſe the blood runs thro' the collateral, as well as the lineal line. *Bro. Deviſe* 39. 1 *Rol. Abr.* 834 *Moor Pl.* 162. *Bendl.* 11, *Co. Lit.* 9. *b.*

A deviſe to a man and his ſucceſſors carries a fee, for by the word *ſucceſſors* is intended heirs, *Quia hæres ſuccedit patri.* 1 *Roll's Abr.* 835. *Cro. Jac.* 146, *Webb* v. *Hearing.*

A gift to the pariſh church of *A* has been conſtrued a gift to the parſon and pariſhioners of *A.* and their ſucceſſors FOR EVER. *T. Atk.* 1 *V.* 437.

If one deviſes in theſe words, *I releaſe all my lands to A.* AND HIS HEIRS.—*A.* has a fee-ſimple; for WHERE THE INTENTION OF CONVEYING APPEARS, THE LAW DISPENSES WITH THE FORM IN WILLS. *Bendl.* 30.

If I appoint that *A.* ſhall have *my inheritance, if the law allows it*, or that *A.* ſhall be *my heir of my lands*; theſe words are ſufficient to convey a fee; and the reaſon of this favour being allowed in teſtaments is, becauſe the teſtator is preſumed *inops concilii* at that time; and tho' by the feudal conſtitution the feoffors in all conveyances are obliged by the very words of the firſt donation made to them; yet *by the civil law any perſon might transfer his property in any form of words that expreſſed his intention of diſpoſing of it;* and the manner of transferring lands by will being derived by the civil law, (as all others were from the feudal,) there was a greater latitude allowed of in the forms of expreſſion in this kind of diſpoſition, than in any of the reſt.

1 *Roll's Abr.* 833, 836.

If a man deviſes land to his wife for life, and after her death to his three daughters, *equally to be divided*, and if one dies before the other, then one to be the heir to the other, equally to be divided; this *laſt* clauſe gives *a fee* to the daughters, for the word *heir* is *nomen operativum*, and chiefly *in a will ſhall be taken in its full extent*, and then *it reaches the moſt remote heirs.*

The word *heir* is *nomen collectivum* and in a will contains heirs and heirs of the heir, and gives a fee. *Skin.* 563. *Rip. temp. Hardw. per Annali* 161.

1 *Sid.* 148. *Collenſon* v. *Wright*, 2 *Leon.* 11.

A. deviſes his land *to his ſon and heir*, and if he dies before his age of twenty-one years, and *without iſſue of his body then living*, the remainder over;—he ſurvives the twenty-one years, and *ſells* the lands. The ſale adjudged good,

good, for *he had a fee-ſimple preſently*, the eſtate-tail being to commence on a ſubſequent contingency, *viz.* If he die *before* the age of twenty-one years without iſſue, and *then* the remainder was to veſt.

If a man deviſes *Black-acre* to his ſaid ſon; *Item*, (*a*) he gives *White-acre* to his ſaid ſon and his heirs; the ſon hath but an eſtate *for life* in *Black-acre*, becauſe *there are two diſtinct deviſes*; but if he had deviſed *Black-acre*, and ALSO *White-acre* to his ſon and his heirs, the ſon ſhould have had *a fee in both*; for it is but *one entire* deviſe, and the word *heir* has relation to the whole ſentence. *Moor. Pl.* 153 1 *Ro. Abr.* 844. 1 *Sid.* 105.

A. deviſes the fee of his houſe to *B.* and after the death of *B.* to *C. his heir apparent*; —the deviſe to *B.* was ſufficient to carry the fee *in præſenti*; yet becauſe *there can be no eſtate limited upon a fee*, and it appears from the words of the will, that *C.* ought to have an eſtate *for life*, therefore to anſwer the intent of the deviſor, *B. took an eſtate for life*, the remainder to *C.* in fee; and by this conſtruction they both took what the deviſor ſeemed to intend them. *Dyer* 357. *Bendl.* 300, 301.

A. deviſes land to *B. for life*, the remainder to *C.* paying ſeveral ſums in groſs;—*C.* hath 6 *Co.* 16. *Collier's* caſe. *Cro. Eliz.* 378. *Cro. Jac.* 527. *Pollexf.* 554. *Cro. Car.* 158. 1 *Roll. Abr.* 834. *Co. Lit.* 9. *b. Cro. Eliz.* 205. 3. *Co.* 21. *a. But* 2 *Chancery Caſes ſeems contrary, fol.* 21.

(*a*) *Item* in a will is a conjunctive in the ſenſe of *and* or *alſo*, and is only made uſe of to diſtinguiſh the clauſes. *T. Atk.* 1 *V.* 438.

a fee, tho' all the ſums of money together do not amount to the annual rent of the land; for *the deviſe ſhall be intended for his benefit*; and *if he had only an eſtate for life, he might die* BEFORE *he could receive the legacies out of the land*, conſequently be a loſer, for *where there is a ſum in groſs to be paid, there the deviſee hath a fee*, tho' the ſum be not the value of the land;—as, if *A.* deviſe one hundred acres to *B. paying* 10*l. to his executors*, *B.* hath a *fee-ſimple*; for the quantity of the ſum in groſs is not material.

6 *Co.* 36. *a.* *Pollexf.* 556. But if a deviſe be to *B. paying ſo much*, or, *ſuch ſums out of the profits of the lands, there* the deviſee takes but *an eſtate for life*; for tho' he takes the land charged, yet *he is to pay no faſter than he receives*, ſo can be no loſer.

6 *Co.* 16. *Cro. Car.* 158. 1 *Jones* 211, 212. 1 *Bulſtr.* 194. 195. *Cro. Car.* 416 So if the deviſe had been to *B.* paying an *annual* ſum to another, this had been but an eſtate *for life*; for *he may pay this out of the yearly profits* without any loſs to himſelf; nor does the reſolution in *Webb* and *Hearing's* caſe impugn this; for there the deviſe was to *R. W.* and *J. W.* and *they to pay yearly to another* 6*l. for ever*; then the will went further, and ſays, *if they or their ſucceſſors deny the payment of it*, THEN *the* LEGATEE *of the rent* TO ENTER; which ſhews the intention of the deviſor, that their eſtate ſhould not determine with their death, ſince *he meant that their ſucceſſors ſhould pay the rent*, therefore it's preſumed to deſign them the land which is *to bear the burden of the rent.*

Bridg. 84.

If

If I deviſe my land to *J. S. in conſideration that he will releaſe* 100*l. which I owe him, to my executors*,—the deviſee has a fee-ſimple *upon his releaſe of the debt*; for the deviſe ſhall be intended for *his* benefit, and *an eſtate for life may be determined before he can receive* 100*l. out of the land*. *Bendl.* 15.

If a man deviſes 100*l.* in legacies, to be paid *within a year* to ſeveral perſons *out of the land*, of the value of 10*l.* and *then deviſes the land to another*, THE DEVISEE HATH A FEE IN THE LAND; for tho' the deviſe be not to him paying 100*l.* yet ſince he muſt take the land ſubject to the charge of the legacies, *he muſt have a fee-ſimple to have any benefit by the deviſe*. 2 *Lev.* 249. *Freak* v. *Lea. Pollexf.* 553. This caſe ſaid to be otherwiſe adjudged, 2 *Jones* 113.

A man had iſſue three daughters, *A. B.* and *C.* and deviſed his land *to his wife, till his heir came to twenty-one years, paying to his heir* 10*l. per ann. and to his children* 20*l. apiece*.—This is a deviſe of the inheritance to the *eldeſt* daughter, excluſive of the others, becauſe *he has ſhewn that he meant his eldeſt daughter to be his heir*, by calling her *heir* in the SINGULAR number; for the will ſaid further, that *if A. his heir died without heirs before twenty-one, then the land to remain over*. 2 *Lev.* 192. *Tilly* v. *Collier.*

A man deviſed his whole eſtate to his wife, *paying legacies and debts*, his debts being 20*l.* and perſonal eſtate but 5*l.*—The wife was adjudged to have a fee-ſimple by the words, "*his whole eſtate*;" for *that* in common acceptance, is, *extended to land*; but beſides, ſince deviſes are conſtrued as they are *really* 1 *Ro. Abr.* 834. *Johnſon* v. *Herman. Style* 281, 193, 1 *Mod.* 100. 2 *Lev.* 91. 2 *Chan. Caſes* 262.

intended, *for the benefit of the deviſee*, ſhe *muſt* have a fee-ſimple, becauſe ſhe is to pay a ſum *in groſs*, which ſhe may not live to receive out of the land, and then by ſuch conſtruction be a loſer, againſt the intention of deviſor.

1 *Ch. Caſes* 136, 187, 262.

So a deviſe of *all* my eſtate real and perſonal for payment of debts, is *a deviſe in fee.*

1 *Jones* 380. *Wilkinſon* v. *Merryland.* *Cro. Car.* 447. 1 *Rol. Abr.* 834. 1 *Mod* 100. *Reports in Equity* 30. *Marchant* v. *Twiſden.*

But where a man is ſeiſed of *Black-acre* in fee by mortgage, which was *forfeited*, and of *White-acre* as his *own inheritance*, and deviſed *White-acre* to his brother, and then deviſed all the reſidue of his goods, leaſes, mortgages, eſtates, debts, ready money, and other goods, *whereof he was poſſeſſed, after debts and legacies paid*, to his wife, and made her executrix and died; *this was no deviſe in fee to the wife of the mortgaged lands*; for the word "*eſtate*" is *coupled* here with chattels, which intended that he meant *only* eſtates for years, and the rather, becauſe the words, "*where he was* poſſeſſed," ſhew that he intended only to give her chattels and the mortgage money, and not the inheritance of the land.

Cro. Car. 129. *Chamberlain* v. *Turton.* 1 *Jones* 195. *Dyer in Marg.* 357.

A. deviſed his houſe or tenement wherein *J. S.* dwelled, called the *White Swan* in *Old Street*, to *J. N. for ever.* This was good to convey the fee-ſimple: and tho' *J. S.* had but a *ſeparate* apartment in the houſe, and the other rooms were inhabited by other perſons, yet *the whole houſe paſſed*, becauſe the houſe in which he dwelt *was deviſed*, and which was called the *White Swan*; which ſign extended

to

to the whole houſe, ſheweth the intent of the deviſor.

A. ſeiſed of land in fee, *ſettles* part of it on his daughter for her life, and *by his will* deviſes the other part of it to his wife *for one year, after his death,* and *then* deviſed all his land *not ſettled or deviſed,* to *J. S. to hold to him and his heirs,* after the death of his daughter, and a year after his death; ——tho' in this caſe it appeared the land had been all ſettled or deviſed, yet by *the deviſe of the land the reverſion paſſed,* the intention of the deviſor being to paſs the reſidue of his eſtate in the lands which were to veſt in *J. S. as the contingencies happen, viz.* either by the death of the daughter, or, the expiration of a year, and not obliged to wait till both happened, and ſo take all together. 1 *Lev.* 212. *Cook* v. *Gerrard.*

* Deviſe to *A.* and *B.* and if either died, the other to be his heir; *Quære,* whether this be an eſtate in fee, or for life only? In *C. B.* vid. 1 *Freem. Rep.* 235.

* If a deviſe is to *A.* and *his poſterity,* it is only an eſtate-tail, *per Ld. Keeper.* But thinking that ſuch a deviſe would create a fee, his *Lordſhip* ordered precedents to be ſearched. *Attorney General* and *Bamfield,* 2 *Freem. Rep.* 268.

* *Inheritance* ſhall paſs without any other circumſtances to manifeſt the deviſor's intent, merely by deviſe *of his eſtate. Per Holt* C. J. 6 *Mod.* 109.

* A deviſe to a man *in perpetuum* paſſes a fee-ſimple. *Per Holt* C. J. 1 *Will. Rep.* 77.

* *A.*

* *A.* deviſes land to *B.* and after two or three legacies to different perſons, he gives 5*l.* to *C.* and directs *B.* to pay it, but gives him two years time to pay it. Adjudged to be *a fee*. *Reeves* and *Gower*, 2 *Abr. Eq. p.* 300. *Ca.* 16.

* By a deviſe of *all the reſt* of his eſtate, ſubject to the payment of his debts, a fee paſſes. *Cliffe et alii* and *Gibbons*, 2 *Ld. Raym.* 1325.

* A deviſe of *all his eſtate* whatſoever, comprehends *all that a man has*, real or perſonal; and where there is a ſurrender to the uſe of his will, a copyhold eſtate *muſt* fall under the ſame conſtructions. *Scott* and *Alberry*, in *C. B. Comyns's Rep.* 337, 340.

* A deviſe to *B.* and her heirs, and if ſhe and *D.* die without iſſue, teſtator gives ſeveral annuities charged upon the premiſſes to charitable uſes; reſolved that *B.* had an eſtate *in fee*. *Scrape* and *Rhodes* in *C. B. ib.* 542.

* *A.* gave *ſpecifick* legacies to his daughters, and other legacies to others, then he gave all the reſidue of his eſtate to *W. R. &c. in truſt to increaſe his daughters portions*. *Ld. C.* decreed that this gave the daughters *a fee*. 2 *Mod. Caſ. in L. & Eq.* 92. *Anon.*

* Teſtator being ſeiſed in fee, deviſed his land to truſtees and their heirs, in truſt for *B.* and *C.* for their lives, remainder to the children of *B.* and to the children of *C.* by her then huſband, in truſt that *they* ſhould have the *profits* thereof when they come of age. The whole court were of opinion that *the children*

children took an eſtate in fee, AS TENANTS IN COMMON. *Bateman* and *Roach*, 2 *Mod. Ca. in L. & Eq.* 104, 6.

* *I. S.* 5th *Sept.* 1715. deviſed all his real and perſonal eſtate to truſtees and their heirs, on truſt that they ſhould convey the real eſtate to his godſon, *A.* for life, *ſans waſte*, remainder to preſerve contingent remainders, *&c.* remainder to the firſt and every other ſon of ſaid *A.* in tail, with power to make a jointure not exceeding a moiety of the real eſtate, and directed that his perſonal eſtate ſhould be laid out in lands, and ſettled in the ſame manner; and in caſe *A.* ſhould die without iſſue, then he willed that *B.* his kinſwoman ſhould enjoy all the rents of his eſtate during her life, and afterwards one fourth part thereof ſhould be enjoyed by *C.* his heirs and aſſigns; another fourth part by *D.* his heirs and aſſigns; one other fourth by *E.* her heirs and aſſigns, and the other fourth by *F.* her heirs and aſſigns; and directed that in caſe any of them the ſaid *C. D. E.* and *F.* ſhould be dead at the time, when by virtue of the ſaid deviſe the ſaid eſtate in manner aforeſaid would devolve upon them, that then the fourth part, which the dead perſon would have been intitled to, if living, ſhould be conveyed to their reſpective heirs. *D.* made his will in 1719. and *M.* his wife reſiduary legatee, and on 16th *Feb.* 1720. after reciting the contingent intereſt that he had by the will of *J. S.* he deviſed that whenever his 4th part ſhould come to *G.* his ſon and heir, or to ſuch perſon as ſhould be his heir, that

it

it ſhould ſtand charged with 12,000*l.* for his wife *M.* and 3000*l.* a piece to his three younger children, and ſoon after died; *M.* his widow married the plaintiff in 1728. *A.* died without iſſue; in 1729. *B.* died, and the plaintiff and his wife and three younger children by *D.* her *former* huſband brought their bill againſt *G. D.*'s *heir at law*, and the truſtees, to have the 12,000*l.* and 3000*l.* raiſed out of *D.*'s 4th part:——the queſtion was, *as the eſtate never veſted in D.* nor any ſettlement made in his lifetime, *whether he could charge it* in the hands of his heir, or the heir was a purchaſer.——*King* C. By the *firſt charge* in the will, *a plain fee-ſimple is deviſed to D.* after the precedent limitations, ſo that his remainder *was veſted*, and that by the *latter* clauſe in caſe of his death a conveyance is directed to be made to his heir, yet that cannot be taken to be a contingent limitation that was to veſt originally in the heir, but only a direction to the truſtees how to convey, in caſe he who was to take the benefit ſhould die before a ſettlement made: ſo his *Lordſhip* thought the eſtate *well* charged. *Thornton* and *Blackbourne & al'*, 2 *Abr. Eq.* tit. *Deviſe*, *p.* 303. *ca.* 25.

* One deviſes his freehold eſtates to truſtees and their heirs, in truſt to convey them to his ſon for life, remainder to his 1ſt, *&c.* ſon in tail male, remainder to his four daughters, to each one 4th *in fee*; and in caſe any of his four daughters die without iſſue, the truſtees to convey ſuch 4th part in fee to the reſpective

reſpective heirs of the daughter ſo dying; one of the daughters died without iſſue, *her 4th in equity belongs to her brother as her heir;* for ſhe having a deviſe of the 4th part to her *in fee*, the words directing a conveyance to be made in caſe of her death to her heir, are no more than what would have been otherwiſe implied, & *expreſſio eor' quæ tacite inſunt nihil operatur. Per Cur'. Blackburn* and *Edgley*, 1 *Will. Rep.* 606.

* *A.* After the deviſe of ſeveral parts of his real and perſonal eſtate, to ſeveral perſons, deviſes the intereſt and produce of the ſurplus of his real and perſonal eſtate to his grand-children, untill their age of twenty-one; this will paſs the abſolute right and property of the real and perſonal eſtate to the grand-children *after* that age. *Newland* and *Shephard*, 2 *Will. Rep.* 194.

* One makes his will and ſays, "*as to ſuch eſtate as God has bleſſed me with,*" I deviſe in manner following; after which he gives part to *I. S.* and *his heirs*, and deviſes the reſt of his eſtate to his wife *in fee*;—this paſſes the eſtate of which the teſtator was *truſtee. Marlow* and *Smith*, 2 *Will. Rep.* 198.

* One deviſes all his *freehold* houſes in *B.* and hath none but *leaſehold* houſes there; theſe will paſs. *Setus* in a *Grant. Day* and *Trig*, 1 *Will. Rep.* 286.

* *I. S.* hath *no* lands in *A.* but hath tithes there, and deviſes *all his* lands in *A.*——the tithes, *as iſſuing out of the lands*, and part of the

the profit of it, *ſhall* paſs. *Aſhton* and *Aſhton*, 3 *Will. Rep.* 386.

* *A.* amongſt other legacies, gives a legacy of 5*l.* to *B. his brother and heir*, and then makes his wife *ſole heireſs* and executrix of all his lands, tenements, goods and chattels, "*the ſame to ſell and diſpoſe of as ſhe ſhould think fit, to pay his debts and legacies:*" this is *a gift* to her of *the ſurplus in fee*, and there is *no reſulting truſt to the heir. Rogers* and *Rogers*, *Caſ. in Eq. temp. Ld. Talbot* 268.

Bacon of Uſes, 350. 1 *Rep.* 120. *Black. Com.* 2 *V.* 335. *Com. Dig. tit. Uſes*, (K. 7.)

* *A.* deviſed in the following words, "*As to all my* temporal *eſtate, I bequeath to my nephew* I." (his *heir* at law,) 50*l.*—— then after giving ſeveral legacies ſays, "*and all the* reſt *and* reſidue of my eſtate, *goods and chattels whatſoever, I give and bequeath to my beloved wife* M. *and whom I make my full and ſole executrix*;——THIS is a deviſe of the *fee-ſimple* eſtate of the teſtator. *Tanner* and *Morſe*, *Caſ. in Eq. temp. Ld. Talbot.* 284.

* A teſtator's ſetting out in his will to *give* and diſpoſe of his "*worldly eſtate*," is a ſtrong proof that *he intends to diſpoſe of the inheritance of his lands*, when there are ſufficient words in the following part of the will for that purpoſe, the words *eſtate at* ſuch a place, or *in* ſuch a place, *may* carry a fee. *Caſ. in Eq. temp. Ld. Talbot* 157.

(*a*) *Salk.* 239. * (*a*) Deviſe to *A.* the teſtator's wife for life, and *then* to be at her diſpoſal, *provided it be to any of his children*, gives an eſtate for life, with a power to diſpoſe of the fee; and where ſuch deviſee with an after-taken huſband, did by

by leaſe and releaſe, and fine, convey the premiſſes to a truſtee and his heirs, to the uſe of the wife for life, without impeachment of waſte, remainder to her daughter by her 1ſt huſband, and the heirs, of her body, remainder to the ſon by the firſt huſband, and his heirs; this adjudged *a good execution of the power*. *Tomlinſon* and *Dighton*, 1. *Will. Rep.* 149.

* The words [*I deviſe all my* temporal *eſtate*,] the ſame as [*I deviſe all my* worldly *eſtate*,] and *paſs a fee*; and this is the plainer, where it is afterwards ſaid, all the "*reſt*" of my *real* eſtate, the word *reſt* being a term of *relation*. *Tanner* and *Wiſe*, 3 *Will. Rep.* 295.———*Note*; Where a title depends on *the words of a will*, this is as properly determinable in equity as by a judge and jury at *Niſi prius*. *Ibid.* 296.

* *A.* has a fee-ſimple in a light-houſe, and a term for years in land adjoining to it, he makes his will, and thereby gives to his ſon *H.* and *his aſſigns*, all his eſtate, and intereſt in the light-houſe, lands, tenements and appurtenances thereunto belonging, upon truſt out of the rents, *&c.* of the term, during the remainder thereof, to pay 200*l. per annum*.———*H.* takes a fee-ſimple *in ſuch part of the premiſſes wherein the teſtator had a fee-ſimple*, and a term for ninety-nine years in ſuch part of the premiſſes wherein the teſtator only had ſuch a term. *Villiers* and *Villiers*, *Barnard*, *Rep.* 307, 311.

* What

* What words in a will give a fee-ſimple, and what a fee-tail, *vid. ibid.* 7, 9. and ſee *T. Atk.* 429. to 438.

As to the deviſes of lands for payment of debts, ſee *T. Atk.* 1 *V.* 419, to 424.

Where a *deviſe* ſhall, or, ſhall not, be in ſatisfaction of a thing due, ſee *ib.* 425, to 428.

3*d. What words paſs an eſtate-tail, or for life.*

Bro. tit. Deviſe, 1. *Co. Lit.* 27. *a. Hob.* 33. 1 *Ventr.* 228, 229. 1 *Ro. Abr.* 835. 2 *Bur.* 116. *to* 1114. *Poſt.* 61. *Co. Lit.* 9. *b. Co. Lit.* 25. *Rep. temp. Hardw. per Annaly* 168.

AND here the rule will hold good, that *the intention of the deviſor will ſupply the want of thoſe words which are neceſſary in conveyances of common law;* but a deviſe cannot direct an inheritance to deſcend AGAINST THE RULES OF LAW. And if *A.* deviſes land to *B.* and his heirs male, the law *in favorem voluntatis* ſupplies theſe words, *of his body*, and MAKE it an eſtate-tail;——ſo if land be deviſed to one & *ſemini ſuo*; but if in the firſt caſe *B* hath iſſue a daughter, who hath iſſue a ſon, he ſhall never inherit; for the rule is, that *whoever claims in tail male as heir muſt convey wholly by heirs male.*

Moor 397. 6 *Co.* 16. *b. Wentw.* 229. *Swin.* 419, 420,

Lands were deviſed to *A.* and his wife, and after their deceaſe to *their* children, they having *then* a ſon and daughter; it was adjudged, in *Wild*'s caſe, that *A.* and his wife had but an

an eſtate *for life*, the remainder to the children for life; for no greater eſtate had paſſed at common law, and *the intent of the deviſor muſt plainly appear, or they will never admit of a conſtruction different from what they would allow in conveyances executed in the life of the party*; and for that reaſon, if the deviſe had been to *B.* and *his* children or iſſue, *B.* (having iſſue at the time of the deviſe,) there *it may take effect according to the rule of the common law*, and there appears no intent of the deviſor to induce them to leave that, therefore only an eſtate for life paſſes, and *B.* ſhall take *as jointenant* with his children during their lives.

1 *Ventr.* 229. *Cro. Eliz.* 743. 6 *Co.* 17 *b.* *Rep. in Equity.* 136. *Northey v. Burbage.*

But if *A.* had deviſed land to *B.* and his children or iſſues, and *B.* had *none* at the time of the deviſe, *then* he takes an *eſtate-tail*; for it is plain by the intent of the deviſor, that the children ſhall have the land, and they cannot take as immediate deviſees, for they were not *in eſſe*, nor by way of remainder, for the deviſe was *immediately* to *B.* and his children, therefore they ſhall be taken as words of limitation, *viz.*

AS CHILDREN OF HIS BODY.

If lands be deviſed to a man, and after his deceaſe *to his iſſue*, having ſeveral children, formerly held void for uncertainty; for being iſſue in the ſingular number, but one can take, and he is not aſcertained; but by *Hale*, that they may all take, for iſſue is *nomen collectivum*, therefore after deceaſe, to iſſue or children, makes a tail to children not *in eſſe*, becauſe they take the benefit from the father.

1 *Cro.* 742. *Taylor* v. *Sayer.* 1 *Vent.* 229. *Owen* 148, & 43. *Lit. Rep.* 347

R. by his will deviſed to his wife, all his lands, *&c.* not ſettled in jointure, and then ſays, "if it ſhall happen that ſhe ſhall *have* "*no ſon nor daughter* by me, *for want of ſuch* "*iſſue*, the ſaid premiſſes to return to my "brother if he ſhall be then living, and his "heirs for ever, paying to *A.* and *B.* 150*l.* "within a year after my wife's death."— Decreed to be an eſtate-*tail* in the wife; becauſe where preceding words are proper to create an eſtate-*tail*, the legal operation of them cannot be controlled by ſubſequent proviſions——The words, "*as no ſon nor* "*daughter*," muſt be underſtood having *no iſſue*; and the words, "*for want of* SUCH *iſſue*" amount to the ſame as if the teſtator had ſaid for want of iſſue *generally*. *T. Atk.* 1 *V.* 434.

Cro. Jac. 415. 416. *Cro Eliz.* 525. *Cro. Jac.* 448. 1 *Bulſt.* 193. *Cro. Car.* 41. *Vaughan* 270. 1 *Rol Ab.* 836. 1 *Lev.* 70, 71. 2 *Lev.* 162.

A. deviſed lands to *B.* his ſon, and if *C.* his daughter ſurvived *B.* and his heirs, then ſhe ſhould have the land. It was adjudged that *B. had but an eſtate tail*; for the word *heirs muſt* be intended *the heirs of his body*, for HE COULD NOT DIE WITHOUT COLLATERAL HEIRS WHILE HIS SISTER WAS ALIVE; but if the will had ſaid, that, if *J. S. a ſtranger*, ſurvives *B.* and his heirs, then *he* ſhould have the land; *there* B. had a fee-ſimple, and then the intended remainder over muſt be *void*, for it is to veſt on *a contingency* of *B.*'s dying without heirs, which is too diſtant to expect, and the whole fee-ſimple being in *B.* there can be no preſent intereſt to veſt in a ſtranger.

Cro. Eliz 498

A. having iſſue two ſons, deviſes *Black-acre* to the eldeſt, and *White-acre* to the youngeſt;

youngeſt; and *if either of them die, his acre ſhould go to the ſurvivor;* and further deviſed, having two daughters, to each of them 10l. ——It was adjudged that the ſon took but an eſtate for *life;* for tho' the conſideration generally gives *a fee*, yet where there are *expreſs* words to determine the intent of the deviſor, *which is always the rule in wills*, there the deviſe ſhall be conſtrued accordingly;—here it is provided, that after the death of either of them the ſurvivor ſhould have *both* acres, which declared his intent, they ſhould have it but for *life*, notwithſtanding the limitation of the payment.

If *A.* deviſes his land to *B.* his ſon, and if he hath iſſue male of *his body* lawfully begotten, then *the iſſue* to have it; and if he hath no iſſue-male, then to others in remainder:—by this deviſe *B.* hath an *eſtate-tail;* for where the deviſor ſaith, if he hath *no* iſſue of his body, then it ſhall remain over, this is as much as if he had ſaid, if *B.* had died without iſſue-male, which had been ſufficient to create an eſtate-tail in him. *9 Co.* 128. *1 Vent* 227. *Owen* 29. *Pollexf.* 487, 487. *Cro. Jac* 695. *Chadork* v. *Cowley.* *Pollexf.* 488.

B. having two ſons, *C.* and *D.* deviſed *Black-acre* to *C.* and *his heirs*, and *White-acre* to *D.* and *his heirs;* and farther willed, that *the ſurvivor of them ſhould be heir to the other*, if either of them died without iſſue; tho' the *firſt* words are ſufficient to paſs an eſtate in fee, yet *the ſubſequent words correct them, and paſs only an eſtate-tail*, and the remainder in fee was not contingent, but *executed*, each ſon being tenant in tail of the part to him deviſed, with the *remainder to the other in* FEE.

Co. Lit. 9. *b.* *Bro. tit. Dev.* 33. 9 *Ro. Ab.* 834.

If a man deviſed lands to another, without more words, *this is but an eſtate for life*; and if the deviſe had gone farther, to him and *his aſſigns*; theſe words of themſelves had *not* enlarged his eſtate; but if it had been to him and his aſſigns *for ever*, *it* had *been a fee.*

1 *Co* 66. *b.* *Archer's* caſe.

If lands are deviſed to *A.* for life, remainder to his firſt heir-male, and the heirs-male of the body of ſuch heir-male, *the deviſee hath but an eſtate for life by the expreſs words of the will*; and the limitation of the remainder to the heir-male, and to the heirs-male of ſuch heir-male, is a good contingent remainder *in the heir-male*, becauſe it may veſt *eo inſtanti* that the particular eſtate determines.

1 *Bulſt.* 219, to 223. *Whiting* v. *Wilkins.* 1 *Ro. Ab.* 836

But where a man deviſed lands to *A.* (his ſon) *for ever*, and after his deceaſe the remainder to *his* heir-male for ever, with other remainders over; this is an eſtate-tail in *A.* for tho' the firſt deviſe, being to him *for ever*, would give him a fee-ſimple, yet the ſubſequent words "*to his heir-male*" ſhew what ſort of inheritance the deviſor intended him; and the word *heir*, being *nomen collectivum*, is ſufficient, in a will, to create an inheritance; but in the former caſe, the remainder to the heir-male could *not* be conſtrued to be words of limitation without deſtroying the *expreſs* intent of the deviſor, who had plainly given it to the deviſee for his *life* only. But in all other caſes where the anceſtor takes any eſtate of freehold, or limitation to the right heirs, or heirs-male, or heir-male, *theſe* words *in a will* are words of *limitation.*

If

If lands be deviſed to *A.* and *B.* *equally to be divided*, they have but eſtates for *life*: for this can mean no more than that they ſhould *ſeverally occupy* the land. 1 *Ro Ab.* 834. *Cro Eliz.* 330. *Moor* 594. *Owen* 65.

A man deviſed all his fee-lands to his wife for life, and after her death to *A. B.* and *C.* his three daughters, *equally to be divided*; and if any of them die before the other, then the others to be her heirs, equally to be divided; and if they all die without iſſue, then to others named in the will. It was adjudged *per cur'*, that *the daughters had an eſtate-tail.* *Cro Jac.* 448 695 *King* v. *Rumbell.* 1 *Ro Abr* 836 *Pollexf.* 487. *Hob.* 75. *Moor* 864.

So where the deviſe was to a man and *his* heirs, and if he die without iſſue, that then the land ſhould go to *A.* and *B.* and the ſurvivor of them;—adjudged an eſtate-tail in the *firſt* deviſee:—for in theſe caſes, the extent of the word *heirs* is confined to the *deſcendants, or iſſue of the body of the deviſee*, ſince otherwiſe the limitation over cannot veſt, *according to the intent* of the deviſor;——even in wills they will not allow a limitation of *a fee, upon a fee.* *Noy* 64. *Dyer* 330. 1 *Ro Abr.* 834 1 *Ro Ab.* 835.

A. ſeiſed in fee of a houſe and land belonging to it, deviſes *the moiety* of the houſe to his wife for life. *Item*, he gives the other moiety of his houſe to his *ſecond* ſon. *Item*, he deviſes the ſaid houſe and all the land belonging to it to his ſecond ſon;—yet the ſecond ſon took but an eſtate *for life*; for the ſecond deviſe to the ſon had its effect *by conveying a moiety of the houſe and the land*, which he had not by the firſt deviſe; and there are no words in the will to create a larger eſtate.

If

1 *Ro. Ab.* 837. If a man deviſes land to his wife for life, and afterwards to *her ſon;* and if *he* dies without iſſue, having no ſon, that then *J. S.* ſhall have it;——the ſon by this deviſe, takes an *eſtate in tail-male*; for tho' the deviſe to the ſon, and if he dies without iſſue, had been a good tail *general*, yet when the deviſor went farther, and ſaid, *having no ſon*, he thereby explained what iſſue he intended ſhould inherit the land, and limited it to the iſſue-male.

Cro. Car. 184 *Spalding's* caſe, 1 *Ventr.* 230. 3 *Lev.* 434. *A.* having iſſue *B.* and *C.* deviſed ſome of his lands to *B.* his eldeſt ſon, and the heirs of his body, *after the death of his wife;* and if *B.* died, living his wife, then to *C.* his ſon; and deviſed *other* lands to his *other* ſon and the heirs of his body; and if he died without iſſue, then to remain over;——*B.* died in the life of the wife, *leaving iſſue;* yet adjudged that *C.* could not enter into the land while any iſſue of *B.* remained; for the words of the deviſe, If *B.* died, living the wife, did *not* abridge the eſtate-tail, which was given by the former words, becauſe *the teſtator could not be ſuppoſed to prefer a younger ſon before the iſſue of the eldeſt*, eſpecially when he had, in the former part of the will, ſettled it on the iſſue of the *eldeſt*, and made the ſame proviſion of other lands the ſame way for the youngeſt ſon.

A. deviſed to *B.* for life; and *if he died without iſſue*, then to remain to *C.* This is an eſtate-tail in *B.* for it is not to remain to *C.* till the iſſue of *B.* be ſpent, and then *they muſt have it as long as any of them are*

in

in being to take. So it is of a deviſe to *B.* for life; the remainder to the next heir-male; and for default of ſuch heir-male, the remainder over. This is a good eſtate-tail; for the words *heir* and *iſſue* are *nomina collectiva*, and carry the land not only to the immediate heir, or iſſue, but to *all* that deſcend from the deviſee.

If the deviſe had been to *B.* and if he dies, *not having a ſon*, this is adjudged an eſtate-tail, becauſe the word *ſon* is *nomen collectivum.* 1 *Ventr.* 231.

A. ſeiſed of lands deviſed them to his wife, if ſhe did not marry; but if ſhe did marry, then his eldeſt ſon, preſently after her deceaſe, to enter and hold the land *to him and the heirs-male of his body*, the remainder to his other ſon in tail-male; the wife did *not* marry, yet the court reſolved, that *the lands were intailed by the will*, taking the intent of the deviſor to be, that *the intail ſhould be created in all events*, but that the eldeſt ſon ſhould not enter till after the deceaſe of the wife, unleſs in caſe of her marriage, and *then* to enter preſently. 3 *Lev.* 125. *Luxford* v. *Cheek.*

A. deviſes land to *B.* and *the heirs of his body*, and further wills, that if *B.* die, the ſame lands ſhall remain to another *in fee*, yet *B. took an eſtate-tail* by the will. *Bendl.* 207.

A man had iſſue *A. B.* and *C.* and having three houſes, deviſed them *all* to his wife, with remainders of *one houſe to each child* and *their* heirs, and if any of his ſaid iſſue died without iſſue of *his* body, the ſurvivors to have *totam illam partem* between them equally 2 *Leon.* 129, 194.

equally to be divided. The *laſt* words carry only an eſtate *for life*, in the houſe of him who dies firſt, to the ſurvivors, for they imply no more than that the whole part of him who dies firſt ſhall go to the ſurvivors, and there being no eſtate limited, it can be no otherwiſe than for life.

A. deviſed all his lands to his wife *until his ſon ſhould be of the age of twenty-four years;* and then to his heir and his heirs for ever: and when he comes to the age of twenty-four years, that ſhe ſhall have the third part for her life; and if he dies before the age of twenty-four years, then ſhe to have it all for life; and after her deceaſe, if the heir has no iſſue, the remainder to *B.* the remainder to the right heirs of the deviſor. —The heir came to the age of twenty-four years, but *no intail was created by the will*, for *the fee-ſimple deſcended to him*, and the limitations were to take place if he died *before* the age of twenty-four; which he did not.

* *J. S.* ſeiſed in fee deviſed to *J. B.* for his life *only*, without impeachment of waſte, and from and after his deceaſe, then *to the iſſue-male of his body lawfully to be begotten*, if God ſhall bleſs him with any, and to the heirs-males of the bodies of ſuch iſſue lawfully begotten, and for default of ſuch iſſue, remainder to *J. B.* and the heirs-males of his body; and for want of ſuch iſſue, he limits two remainders over in the ſame words;——adjudged that *J. B.* took only an eſtate *for life*, for the eſtate was given to him for life, and *there was a limitation afterwards*

wards to HIS ISSUE, which was a *deſcription of the perſon who was to take the eſtate-tail. Backhouſe* and *Wells*, 1 *Abr. Eq.* 184. 2 *New. Abr. of the Law* 61. S. C. *in totidem verbis.*

* *A.* deviſed certain lands to his eldeſt ſon for life, without impeachment of waſte, remainder to *J. S.* his grandchild for life, without impeachment of waſte, with power for him to limit a jointure of the ſame land to any woman he ſhould marry, for her life; and after his death he deviſed the lands to the firſt ſon of *J. S. the grandchild in tail*, and ſo to the 6th ſon, and then deviſed that if *J. S.* the grandchild, ſhould die *without iſſue-male*, the land ſhould remain to *J. B.* ——Held that *J. S.* took an eſtate tail; for if there had been a 7th ſon he could *not* have taken; and there *it was neceſſary to create an eſtate-tail* BY IMPLICATION. *Langley* and *Baldwin*, 2 *New. Abr. of the Law* 61. 1 *Abr. Eq.* 185. *Ca.* 29. S. C. Certified to be an eſtate-tail by the court of *C. P.* and decreed accordingly in chancery. *Ibid.*

* Deviſe to *A.* and *the heirs male of his body, viz.* to the 1ſt ſon of *A.* and the heirs-male of his body, and ſo to the 2d and other ſons of *A.* ſucceſſively; *A.* has only an eſtate *for life. Law* and *Davys*, *Fttz-Gibb.* 112.

* *J. S.* had iſſue *A.* and *B.* and deviſes lands to *A.* and *if he die without heirs*, *B. his brother* ſhall have it.——*Per Cur'* this ſhall create *an eſtate-tail in A.* becauſe it is impoſſible for him to die without heirs whilſt *B.* his brother was alive; and ſo they ſaid it had been

been *often* ruled. *Allen* and *Spendlove*, 1 *Freem. Rep.* 74.

* *A.* deviſed to *B.* and *C.* brothers, ſeveral parcels of land, and *if either of them die, that the other ſhould be his heir*;—*B.* died. Queſtion was, whether *C.* ſhould have the fee or only an eſtate for life? The court *inclined* to the *latter*; *Sed adjournatur*. *Gynes* and *Kemſley*, 1 *Freem. Rep.* 293.

* Upon a ſpecial verdict the caſe was; *R. G.* ſeiſed in fee of lands in *S.* by will in writing, deviſes to *R.* ſon of his late brother, all his lands commonly called *P.* and alſo all other his lands, *during his natural life, and to his heirs-male of his body begotten*, and for want of ſuch iſſue, he the ſaid *R.* to have the ſaid eſtate *during his natural life, and no longer*; and then his will was, that the aforeſaid eſtate ſhould deſcend to *P.* his nephew. ——*R.* ſuffers a recovery to the uſe of himſelf and his heirs, and deviſes this land to the defendant in fee, and *dies without iſſue-male*; and it was adjudged to be *an eſtate-tail in R.* and ſo the remainder barred by the recovery, and not an eſtate for life, and ſo forfeited by the recovery; for the words, "*and for want of ſuch iſſue, he the ſaid* R. *to* "*have but an eſtate during his natural life*," is no more than *the law implies*; for if tenant in tail has no iſſue, it reſolves into an eſtate *for life*, and ſo it was adjudged: the objection was, that it ſhould be conſtrued thus,——I give the land to *R.* during his life, and *no longer*, in caſe he has no iſſue-male of his body, and ſo an eſtate-tail

on

on a contingency, and he dying without iſſue-male, it is now become an eſtate for life *ab initio*,———but the judgment was *ut ſupra*. *Fountain* and *Gooch*, adjudged, 2 *New Abr. of the Law* 59, 60.

* If lands are deviſed to one *generally*, he takes but an eſtate *for life*, unleſs it appears plainly that the teſtator intended him a greater. *Vide Prec. in Chan.* 68.

* A deviſe to *A. and his heirs-male for ever*, is an eſtate-tail in *A.* Adjudged *per tot. cur.* upon *great* conſideration in *C. B. Baker* and *Well*, 1 *Ld. Raym.* 185.

* *A.* having iſſue a ſon and two daughters, deviſed the eſtate in queſtion *to his ſon and* his heirs, Provided, *that if the ſon ſhould die before he comes to twenty-one*, or, *without iſſue of his body*, then *it ſhould go to the teſtator's two daughters*:———*A.* dies, and the ſon lives to twenty-one, and makes his will, and deviſes the eſtate to the plaintiff; and the court inclined that *the ſon had but an eſtate*-tail, and ſo the deviſe to the daughters took effect, *the ſon being dead without iſſue*; for tho' it is deviſed to him and his heirs, yet the latter words, *if he die without iſſue*, make it an eſtate-tail; for the meaning ſeems to be plain, that if the ſon had iſſue, *that iſſue ſhould have it*, if not, it ſhould go to the daughters. In *B. R. Helier* and *Jennings*, 1 *Freem. Rep.* 509. *Vide* 1 *Ld. Raym.* 505. S. C.

* Deviſe of lands to huſband and wife for *their* lives, and after the death of the wife, then to their children; *on the death of the wife*

wife the huſband's eſtate determines. 2 *Will. Rep.* 671.

* Deviſe to the heirs-male of *J. S.* begotten ;———*J. S. having a ſon*, and the teſtator taking notice that *J. S.* was *then* living, a ſufficient deſcription of the teſtator's meaning, and *ſuch ſon ſhall take*, tho' ſtrictly not the heir of *J. S.* 1 *Will. Rep.* 229.

* In a deviſe of land to *A.* for life, and if *A.* die *without* iſſue, *then* to *B.*——here is an *expreſs* eſtate for *life* to *A.* yet the ſubſequent words will turn it into an eſtate-tail.——But when lands are deviſed to *A.* for life, remainder to truſtees, *&c.* remainder to his firſt, *&c.* ſon in tail male, *&c.* and if *A.* die *without iſſue*, then, *&c.* this will *not* give an eſtate-tail to *A*, but the words "*without iſſue*" will be intended without *ſuch* iſſue. *Blackborn* and *Edgley*, 1 *Will.* 605.

* One deviſes a third of all his eſtate whatſoever to his wife, and two thirds of all his real and perſonal eſtate to his ſon *J. S.* and *his heirs* ;——the wife hath but an eſtate for life in the third part of the real eſtate, the word *eſtate* being intended to deſcribe the *thing* only, not the *intereſt* in the *thing*, and whenever the teſtator intends to give *a fee*, he adds the word HEIRS to the word *eſtate*. *Cheſter* and *Painter*, 2 *Will.* 335.

* "All my eſtate to *A.* for life, and to "*T. B.* after her death, he taking my name, "and if he refuſe, to *M. B.* and his heirs "for ever," The maſter of the *Rolls* held, that *T. B.* took only an eſtate for *life ; but*

Ld.

Talbot was of opinion that he had *a fee*, and varied the decree made at the *Rolls*. *Ibid.* 337.

* Deviſe to my ſon *A.* for life, remainder to his firſt, &c. in tail male, remainder to his ſecond, third, fourth and fifth ſons ſucceſſively, *without ſaying for what eſtate*, or any words *tantamount*.——*A.* has two ſons, the eldeſt of whom dies in his lifetime; ——the *ſecond ſon* ſhall have an eſtate-*tail*, being the firſt at his father's death, (3 *Will. Rep.* 178.) for which was cited *Trafford* and *Aſhton*, (*a*) *Vern.* 660. (*a*) *Q. autem*, For the reaſon of that caſe ſeems rather againſt this conſtruction, which is, at leaſt *better* warranted by the caſe of *Chadwick* and *Doleman* in the ſame book, *p.* 528. *ibid.* in a note.

* *A.* deviſes lands to his wife for life, then to his ſon *H.* for life, then to his ſon *G.* and his heirs for ever; if he died without heirs, then to his two daughters *K.* and *L.* ——This is *an eſtate tail in G. Caſ. in Eq. temp. Talbot* 1.

* One ſeiſed of lands in fee, and being *ceſtuy que truſt* of other lands, deviſes them to *A.* for life, remainder to his firſt and ſecond ſon in tail male, (going no farther) and after *A.*'s death, without iſſue male, then to a charity.——*A.* is a tenant in tail *until iſſue born*, ſaving as to the truſt eſtate. *Attorney General* and *Sutton. in Dom. Proc.* 1 *Will. Rep.* 754.

* Deviſe to *A.* for life, and after his deceaſe to the heirs-male of the body of *A.* and the

the heirs-male of the body of ſuch heirs-male, ſeverally and ſucceſſively as they ſhall be in priority of birth, *&c.* remainder over; ——whether this be a tenancy in tail, or for life only? *Legate* and *Sewell*, 1 *Will. Rep.* 87.—*Vide* 2 *Vern.* 551. S. C.—1 *Abr. Eq.* 394. *C.* 7.

* A deviſe by a father to a ſecond ſon and his heirs for ever, and for want of ſuch heirs, then to the right heirs of the teſtator,——*is an eſtate-tail*; but, had the deviſe over been to a *ſtranger*, the ſecond ſon would have taken *a fee-ſimple*, and conſequently *the deviſe over had been void.* In *B. R. Nottingham* and *Jennings*, 1 *Will. Rep.* 23. 1 *Ld. Raym.* 568. S. C. *Salk.* 233.

* *A.* made a will as follows, *viz.* "*I give* "*to my eldeſt heir-male and his heirs-males for* "*ever, all my lands in ſuch a place, and if* "*there be a female, ſhe to have* 12*l. per ann.* "*as long as ſhe lives.*" Teſtator had two ſons, the eldeſt died in his lifetime, leaving a daughter *who was the heir-general*, yet the *youngeſt ſon was adjudged to take the lands. Baker* and *Well. T.* 8. *W. Rot.* 1484. *C. V.* ——*Vide* this caſe cited in *Prec. in Chan.* 468.——This caſe is reported in 1 *Ld. Raym.* 185. with a deal of variation, *viz.* "*I give to* D. *my eldeſt ſon, all that*, &c. *to* "*him and his heirs-males for ever; if a female,* "*my next heir ſhall allow and pay her* 200*l.* "*in money at* 12*l. a year, out of the rents and* "*profits, and he ſhall take all the reſt to him-*"*ſelf, I mean my next heir and his heirs-*"*male for ever.*" *D.* the ſon dies, leaving iſſue

iſſue a daughter, the leſſor of the plaintiff, on whom the younger ſon of the teſtator had entered, *&c.* the court after great conſideration, adjudged, that this deviſe gave *an eſtate-tail* ONLY *to D.* and that tho' in a deed the words would have paſſed a fee; yet in a will, as *the intention of the teſtator appears*, the law will ſupply the words *of the body*, *&c.* 2 *Vent.* 311.

* One deviſes his lands for payment of his debts, and then to *A.* for life, with power to make leaſes,——remainder to the heirs-male of the body of *A.*——tho' this be but a deviſe of a truſt, *and executory*, and *expreſſed to be for life of A.* yet IT IS AN ESTATE TAIL IN *A.* barrable by fine and recovery. *Secus* of marriage articles to ſettle an eſtate on *A.* for life, remainder to the heirs male of his body; *this* being an agreement to do a future act, and in which the iſſue are particularly conſidered and looked on as purchaſors. *Bale* and *Coleman*, 1 *Will. Rep.* 142.

* Deviſe to teſtator's wife, for life, and *then to be at her diſpoſal*, provided it be *to any of his children*, gives an eſtate *for life*, with *a power to diſpoſe of the fee. Tomlinſon* and *Dighton*, in *C. B*, 1 *Will. Rep.* 149.

* I *deviſe* all my lands in *B.* to my eldeſt ſon. *Item*, I *give* to my ſecond ſon *C.* all my lands in *D.* alſo to my daughter I give 500*l.* to be paid as ſoon as may be, out of the aforeſaid eſtate and premiſſes, and within three years, if it be poſſible; *the ſecond ſon has but an eſtate for* LIFE, *chargeable with the* 500*l.*

Redoubt

Redoubt and *Redoubt*, *Vin. Abr.* tit. *Deviſe*, (Q. a.) C. 18.

* Where there is no deviſe antecedent, the firſt ſon of the wife cannot take by way of remainder. *Right* and *Hammond & al'*, in *B. R. Comyns's Rep.* 232.

* A limitation to one, to take and enjoy the profits of an eſtate *during his life*, and after his deceaſe to the heirs-male of his body, would make an eſtate-tail *where nothing appears which explains the teſtator's intention to the contrary*, otherwiſe not. In *C. B. White* and *Collins*, *ibid*, 289.

* A deviſe that if *W.* the eldeſt ſon of the teſtator *ſhould happen to die without iſſue*, that *then*, and *not otherwiſe*, after *W.*'s death, he deviſed it over to his ſon *R.* and his heirs, ——Held that *W.* took an eſtate-tail *by implication*. *C. B. Walter* and *Drew & al'* *Comyns's Rep.* 327.

* *J. S.* deviſed lands to *B. for life*, and after his deceaſe *to the heirs-males of the body of the ſaid B.* lawfully to be begotten, and his heirs for ever; but if *B.* ſhould die without ſuch heir-male, then he deviſed them over; this is *an eſtate-tail in B.*—— In *B. R. Goodright* and *Pullyn & al'*, 2 *Ld. Raym.* 1437.——*Vide* 2 *Vol. Abr: Eq.* 315.

* An eſtate was deviſed to two ſiſters and *their heirs*, and that if they (who were the teſtator's daughter's) ſhould die without heirs, then the teſtator gave his eſtate to his brother *T.*——The court ſeemed to be of opinion, that *this was an eſtate-tail in the two daughters*,

ters, but adjourned. In *C. B. Anon.* 2 *Abr. Eq.* 315. *C.* 27.

* Deviſe to *A.* and his heirs lawfully begotten, that is to ſay. to his firſt, ſecond, *&c.* ſons ſucceſſively, *&c.* gives *A.* but an eſtate for *life*. *Davis* and *Low*, 2 *Ld. Raym.* 1561. *Vide* 2 *Abr. Eq.* 316.

* I deviſe my lands to *A.* for life, and after his deceaſe, remainder to the heirs-male of the body of *A.* and to the heirs-males of ſuch iſſue-male.——The *C. J.* was of opinion, that theſe words conveyed an eſtate-*tail*, to *A. Burnet* and *Coby*, 1 *Barnard Rep. in B. R.* 367.

* If an eſtate be given to a man and his heirs, and if he died without iſſue, remainder over; theſe words are explanatory of the word *heirs*, and *make an eſtate-tail.* In *C, B. Brice* and *Smith*, *Comyns's Rep.* 539.

* Teſtator deviſed lands to *A.* for life, remainder to truſtees to preſerve contingent remainders during the life of *A.* remainder to the heirs of the body of *A.*——this is an eſtate-*tail*. *Coulſon* and *Coulſon*, 2 *Vol. Abr. Eq.* 318, *C.* 34.

Deviſe of an *eſtate-tail*. *Annaly* 160.

4th. Of executory deviſes, contingent remainders, and croſs remainders.

Black. Com. 2 *V.* 173, 334. 1 *Eq. Caſ. Abr.* 186, and *Jacob's Dict.* laſt edit.

AN executory deviſe is *a future intereſt* which cannot veſt at the death of the teſtator, but *depends on ſome contingency*, which muſt happen *before* it can veſt.

As if *A.* deviſes that *after* his ſon paid 10*l.* to his executors, he ſhould have his term;—this is a good deviſe of the term; or, if the deviſe had been to his ſon *after the death of B.* this had been good to *veſt* the remainder of the term in the ſon, when the contingency happened;—and this is, in effect, the judgment in *Manning's* caſe; where a term of fifty years was deviſed to *B.* after the death of *C.* and *C.* ſhould have it during his life; it was adjudged, that *this was a good deviſe of as* much of the term as remained after the death of *C.*

The great queſtion in theſe caſes was,—Whether the diſpoſition of the term to *C.* during his life, was not ſuch *a total* diſpoſition of it, that no remainder could be limited over: and as theſe executory remainders ſeem to deſtroy the former rules, (*viz.* that *no eſtate can be deviſed, but ſuch as can be made by conveyance in the life of the party,*) we will inquire how they came to be eſtabliſhed againſt them.—It has been long allowed in chancery to ſettle terms *in truſt*, with remainders

remainders over, which were to ariſe on contingencies; for they thought it very ſevere, and againſt natural juſtice, ſince a man hath as abſolute a power over his leaſe, as he who hath an inheritance, has over it, that he ſhould be diſabled from ſettling his leaſe, as he might his inheritance, to make proviſion for his family, and the contingencies of it, which were in his view; but the courts of law, (where the deviſes as well as other conveyances were examined,) did not ſo readily admit of ſuch executory remainders of terms, becauſe *it directly thwarted the rules of law;* for which reaſon all the judges, in the ſixth of *Edward* 6. delivered their opinions, that if a term for years be deviſed to one, provided that if the deviſee die, living *J. S.* then to go to *J. S.*—that remainder was abſolutely void, —becauſe ſuch a chattel intereſt of a term for years is leſs than a term for life; therefore the law will endure no limitation over. *Not. Arg.* 9. *Dyer* 74. *a.* *Co. Lit.* 46. *a.*

But the courts were not long governed by this judgment; for tho' it might have been reaſonable (before the reign of *Hen.* 8.) when terms for years were very ſhort, and leſs regarded than freehold eſtates, becauſe they were under the power of the freeholders;—yet when the leſſees found their terms ſecured to them by *ſtat.* 21. *Hen.* 8. *cap.* 15. (which impowered them to falſify all recoveries had againſt the tenant of the freehold, on feigned titles,) they began to ſwell their terms beyond the compaſs of a life; and the judges, in 19 *Eliz.* allowed of theſe executory remainders of terms by *Dyer* 358. *b.* *Not. Arg.* 9, 10.

deviſes, as they had before by way of truſt, *that men might diſpoſe, and ſettle them, to anſwer the common conveniencies of life.*

Then the chancery, (the better to fix them in it,) allowed of bills by the remainder man, to compell the deviſee of the particular eſtate to put in ſecurity, that he in remainder ſhould enjoy it according to the limitation;——but, this multiplying chancery ſuits, they reſolved, that there was no need of that way, but that the deviſee of the particular eſtate ſhould not have power to bar the remainder man; ſo that the law has been long ſettled, that *executory deviſes are good, if the contingency is to happen within one life or two* WHICH ARE IN BEING, for there can be no tendency to a perpetuity in that caſe, becauſe the lives will wear out.

10 *Coke* 47. *a.* 52 *b.* 1 *Sid.* 451.

If termor deviſes his term to *A.* for life, the remainder to another, tho' *A.* hath the whole term in him during his life, and ſo no remainder can be limited over at common law, yet it is good by way of executory deviſe.

Cro. Jac. 198. 1 *Ro. Ab.* 610. *Cro. Eliz.* 9.

If termor deviſes his term to *B.* for life, and after to *C.* his ſon, then to the eldeſt iſſue-male of *C.* for life,—tho' *C.* hath no iſſue-male at the time of the deviſe, nor at the death of the deviſor, yet *if he hath iſſue at the time of his death, it ſhall take the remainder by way of executory deviſe;* for tho' it be a contingency upon a contingency, yet being limited to fall out in a life or two, which muſt wear out in a life or two, it was adjudged good.

1 *Ro. Ab.* 612.

A. poſſeſſed

A. poſſeſſed of a term, deviſes to his wife for life; and after her death to his children unpreferred. The wife died,—*B.* (being the only child unpreferred,) ſhall have the term; for an executory deviſe may be made to a perſon uncertain, for ſo *B.* was while the wife lived, for ſhe might have been preferred in the life of the wife, and then ſhould take nothing. 8 *Co.* 96. *b.* 1 *Ro. Ab.* 612.

A. poſſeſſed of a term for years, deviſed it to his wife for life, and then that *J.* his ſon ſhould have the occupation thereof as long as he had iſſue; and if he died without iſſue unmarried, in the ſame manner to another ſon, the remainder over.—This remainder, upon the death of the ſons unmarried, was adjudged good; for here the limitation is, if he dies without iſſue unmarried, then the remainder over, which is on the matter, if he dies within the term unmarried; for he cannot have iſſue unleſs he marries; and this is a poſſibility which the law will expect, becauſe it will happen in a life; and there is no difference between the occupation and the uſe of a term, or the profits of the land, and the land itſelf, or the leaſe or farm; for a deviſe of any of them will carry the *whole* intereſt; and to this purpoſe it was reſolved between *Parker* and *Plumer*, in *Cro. Eliz.* 190. *Cro. Jac.* 461. *Vide* 3 *Leon.* 22. 8 *Co.* 95. *b.* 10 *Co* 47. *b.*

A. deviſes his term to his wife for her life, and after her deceaſe to *B.* his ſon; and if *B.* died without iſſue, then to *C.* It was adjudged, that this deviſe to *C.* after the death of *B.* without iſſue, *was void;* for ſince it could not veſt while *B.* had iſſue of his 1 *Sid.* 450. *Cro. Car.* 167. 1 *Ro. Ab.* 610. 4 *Inſt.* 87. *Cro. Jac.* 461. *Not. Arg.* 10. 1 *Ro. Ab.* 611.

his body, the deviſe is no more than to . *and the heirs of his body*, which withot doubt had been void; for tho' men preſumed on the judges, when they firſt allowed of remainders of terms after eſtates for lives, and endeavoured to bring remainders upon eſtates-tail within the reaſons of thoſe reſolutions and conceſſions; yet the court would never endure thoſe remainders, becauſe *it is too foreign and diſtant to expect them after a man's death without iſſue;* and if they were allowed of, would make a direct *perpetuity*, which is an undeniable reaſon againſt any ſettlement; for it is againſt the nature of human affairs ſo to ſettle an eſtate in a family, that on contingency or revolution of fortune the owner ſhall have *no* power over it;——therefore *the deviſe in this caſe to* B. *is an abſolute diſpoſition of the term to him;*——for *iſſue* is not a word of limitation of *time*, (as *Coke* obſerves in *Leonard Love's* caſe, 10 *Co.* 17. *a.*) ſo that *B.* and his executors ſhall have it no longer than he hath *iſſue* of his body; but *the term is totally in him*, and at his diſpoſal, and ſhall go to his executors during the continuance of it, and ſhall never, for default of iſſue of his body, revert to the executors of the deviſor. *Vide* 1 *Sid.* 37. ſeems contrary.

Not. Arg. 6.

1 *Sid.* 451.

1 *Ro. Ab.* 611.

3 *Ro. Ab.* 831.

If tenant in fee-ſimple deviſes land to *A.* and his heirs, and if he dies without iſſue in the life of *B.* then to *B.* and his heirs;——tho' this be a limitation of *a fee on a fee*, yet becauſe the remainder to *B.* muſt veſt on a contingency, which will fall in a life, it has been held a good executory remainder.

Not. Arg. 9.

If

If *A.* deviſes land to his executors to be ſold, if the heir fails of payment at ſuch a day, this is an executory *intereſt* to them: ſo if the deviſe of *Borough Engliſh* lands had been to *the* eldeſt ſon, *paying* ſuch a ſum to the younger ſons, and that in default of payment, the land ſhould go to them and their heirs;——tho' the word *paying* in a will *amounts to a condition*, yet becauſe that muſt deſcend to the deviſee or heir, and no one elſe can take advantage of his default, they adjudged it *an executors deviſe in the younger ſons*, which was to veſt on the default of payment in the eldeſt; and in *Hanniſworth's* caſe, (which is the ſame in effect,) they compared it to a deviſe, that if the eldeſt ſon did not pay all the legacies, then the land ſhould go to the legatees; in which caſe it had gone, without doubt, for non-payment to them; and tho' *Vaughan* cites this caſe as parallel to *Gardiner* and *Sheldon*, yet I conceive the law will make a *great difference* between;—for in the former caſes the future deviſe was to veſt on a contingency of the teſtator's ſon and daughters dying *without iſſue*, which is very foreign and diſtant, and looks directly to a perpetuity; for ſhould that future intereſt be good, the judgment in *Pell* and *Brown's* caſe would protect it from any recovery, or other alienation of the heir, which would perpetuate an eſtate in a family that could not be docked;——there is a difference between *Pell* and *Brown's* caſe, and this of *Gardiner*; for, in the former, the deviſor having *three ſons*, *A.* *B.* and *C.* deviſed his land

3 *Co.* 21, *a*, *Cro. Eliz.* 833.

Vaughan 271,

Cro. Jac. 594. 1 *Roll's Abr.* 611. *Co. Lit.* 591. *Vaughan* 272.

land to *B.* and his heirs, paying 20*l.* and if *B.* died without iſſue, living *A.*——then to *A.* and his heirs: in this caſe they firſt adjudged it a fee-ſimple in *B*; and yet *a good executory deviſe to A.* in FEE; but this was to veſt on the ſingle life of *A.* for if *B.* died without iſſue, living *A;* or without iſſue after the death of *A.* then his future intereſt was never to riſe.

1 *Lev.* 135. *Cro. Jac.* 593 And in this caſe it was adjudged, that the recovery ſuffered by *B.* could *not* bar the executory intereſt of *A.*——for ſince all future deviſes depend on the ſame reaſon, to allow the particular tenant to deſtroy one in any caſe, would be in effect to make all ſuch deviſes void, or at leaſt uncertain, which would be very ſevere, it being *directly againſt the intention of the teſtator*, and of ill conſequence to others: for then ſhould a man deviſe that his heir ſhould pay ſuch a ſum to his executor, or ſuch portions to his younger children, or they to have the land;—it would be very unreaſonable to allow the heir a recovery, or any other means to fruſtrate the *pious* intention of the father *to provide for his younger children*, or for payment of his debts.

1 *Lev.* 11, 12. 1 *Sid.* 17, 48. *Plunket* v. *Holmes.* *Raym.* 28, 29. *A.* has iſſue *B.* and *C.* two ſons, and deviſes his land to *B.* for life, and if he dies without iſſue *living at the time of his death*, to *C.* and his heirs; but if *B.* had iſſue living at the time of his death, then to the right heirs of *B.* for ever. This is *a contingent remainder*, and no executory deviſe to *C.*——for *B.* took only an eſtate *for life*, *by the* EXPRESS *words of the will*; and the remainder

remainder to *C.* (which was to veſt on the contingency of *B.*'s having *no* iſſue at the time of his death,) was *not in abeyance* in the mean time;——yet they would not allow the reverſion to be in him ſo as to *merge* the eſtate for life, and conſequently to deſtroy the contingent remainder.

Baron and feme ſeiſed to them and the heirs of the huſband;——the huſband deviſes the land to the heirs of the body of the wife, if they attain to the age of fourteen years.——The wife having no iſſue at the time of the deviſe, admitting a deviſe to one not *in eſſe* to be good, then *this is good by way of executory deviſe*, to veſt on the contingency of the heir's being born, and arriving at the age of fourteen. 1 *Lev.* 135, 136. *Raym.* 163.

A. hath iſſue three ſons, and by will deviſeth *a tenement to each* of them; and further ſays,——"That when *either* of the "ſaid children ſhall die, the houſes, lands, "and goods whatſoever I have *now* given "them, *ſhall be* EQUALLY DIVIDED *between* "*them that are living*,"——without expreſſing any eſtate to ſupport the contingent remainder; and if contingent remainders do *not* veſt during the *continuance* of the particular eſtate, or at the inſtant *it* determines, they are deſtroyed; but whether the ſurvivors took by way of executory deviſe, or remainder executed,—is not clear from the books which report this caſe: *Levinz* ſays, the judgment was, that the ſurvivors took by way of executory deviſe;—*Pollexfen* ſays it ſhall go to the ſurvivors. 2 *Lev*, 202. *Pollexf.* 479. *Forteſcue* v. *Abbot.*

But

1 *Bulſtr.* 61. *Cro. Jac.* 460. *Pollexf.* 481. 482.

But taken either way, it differs from the caſe of *Wood* and *Ingerſole*;—for *there* a man having land in *three vills*, deviſeth *the land of* A VILL *to each ſon*; and if any of his ſons die, then the one of them, to be heir to the other.—In this caſe there were no remainders, nor any other eſtates given to the younger ſons than *an eſtate* for *life in poſſeſſion*;——but on the death of his eldeſt ſon, *his* heir *took* his part *by deſcent*: the true reaſon of the judgment ſeems to be, becauſe the words, "*If any of his ſons die*, "THEN *the* ONE *to be the* HEIR *to the other*," were *void for the uncertainty*, which of the two ſurvivors ſhould take when the eldeſt died.

3 *Co.* 19, 20, *Boraſton's* caſe *Pollexf.* 486. 3 *Co.* 21.

A. deviſed lands to his executors, till his ſon ſhould come of age; and when his ſon ſhould come of age, then he ſhould enjoy the land for him and his heirs.——This is *a remainder* EXECUTED *in the ſon*, and no contingency;——for the words *when* and *then*, in this caſe, only *denote the time* when the remainder is to execute, and will no more make the remainder contingent—than in the common caſe, where a leaſe is made for life, or for years; and after the deceaſe of the leſſee, or expiration of the term, then to remain to another: here tho' the words be after the term that it ſhall remain, yet it is *a preſent*, and no contingent remainder;—for where words refer to *that* which muſt *needs happen*, there ſhall be *no* contingency.

Cro. Jac. 595. *Chadock* v. *Cowley*.

A man having two ſons, deviſed parcel of his lands to one and his heirs, the reſt

to the other and his heirs; and farther willed, that the ſurvivor ſhould be heir to the other, if either dies without iſſue.—The deviſees were tenants *in tail*, with remainders in fee, executed of each others part.

A. having iſſue five ſons, (his wife being *enſient*,) deviſes two thirds of his lands, to his four younger ſons, and the *in ventre ſa mere*, if it were a *ſon*, and *their* heirs; and if they all die without iſſue-male of their bodies, or any of them, that the lands ſhall revert to the right heirs of the deviſor:—by this deviſe *the* YOUNGER *ſons were tenants in tail in poſſeſſion*, with croſs remainders to eac'. other, and no part ſhall revert to the heirs of the deviſor, till all the younger ſons *be dead* without iſſue-male of their bodies. *Dyer* 303. *b.* *Cro. Jac.* 656. 1 *Ventr.* 224. *Hob.* 33.

But where a man having *three ſons*, and ſeiſed of *three houſes*, deviſed a houſe to *each* ſon, and his heirs, with this proviſo, that if *all* his ſaid children die without iſſue of their bodies lawfully begotten, that then all his ſaid meſſuages ſhall remain and be to *J. S.* and his heirs.—In this caſe there ſhall be *no* croſs remainders to the ſons;—but on the death of any one of them, his part ſhall go *immediately* to *J. S.* who is not obliged to wait till they all die without iſſue, to take it all together. *Cro. Jac.* 655. *Gibert* v. *Witley & al'.*

A. being ſeiſed of *two* meſſuages, and having *a ſon* and *two daughters*, by three ſeveral venters, deviſed one meſſuage to *B.* (his daughter) in fee, another to *C.* (his daughter) in fee; and if *C.* died before her age of ſixteen years, *B.* then living, then her part *Bendl.* 212. *Dyer* 330. *b.* *Vaughan* 267. *Clatches's* caſe.

part to go to *B.* in fee; and if *B.* died without iſſue, living *C.*—then *C.* to have her part to her and her heirs; and if both his daughters died without iſſue, then both of the meſſuages ſhould go to his ſon in fee—*C.* died without iſſue, and her part went to the ſon, and not to the ſurviving daughter, becauſe *the* LAST *clauſe created* NO *croſs remainder.*

J. S. having *a ſon* and *four daughters*, and being ſeiſed of lands in *fee*, and of a long term, deviſes all his eſtate in *D.* (where the *freehold* lies,) and likewiſe in *S.* (where the *term* is,) to *his ſon and his heirs*, and if he die without iſſue unmarried, then to his four daughters, and if he marries and dies without iſſue then living, and having a wife, then after the death of ſuch wife, likewiſe to his four daughters—*Holt*, for the *plaintiff* in the writ of error, made two points:—firſt, whether hereby an eſtate *in tail* of the freehold lands paſſed to the ſon, and the remainder to the four daughters,—or, whether the eſtate to the ſon was *a fee*, and it came to the daughters by way of executory deviſe; and *that it was a fee* to the ſon, and good to the daughters by way of executory deviſe, he cited 2 *Cro.* 590. *Rol.* tit. *Eſtate*, 835, 836, and this point was yielded by the counſel on the other ſide.——But to the 2d point, if this remainder of the term was good to the four daughters, he argued that it was, and cited *Dyer* 74, 358, *Com.* 590. 2 *Cro.* 460. and ſaid, that the reaſon of the reſolution in *Child* and *Bayley's* caſe was, *for the repugnancy*, for having

firſt

firſt deviſed it to the deviſee and his aſſignees. This was oppoſed by the other ſide, and *Child* and *Bayley*'s caſe *relied* on; as alſo *Roll.* tit. *Deviſe*, 611. *Leventhorp* and *Aſhley*'s caſe.——Time was given for further argument: *Holt* cited *Com.* 590. and *Lowe* and *Windham*'s caſe, 22 *Car.* 2. reported in *Mod.* 50. *M.* 33 *Car.* 2. *B. R. Sommers* and *Gibbon*, *Skin. Rep.* 144.

An *executory* deviſe need not veſt as a remainder muſt, *eo inſtante* that the particular eſtate determines; but that *the law would ſupport it without a particular eſtate*, and expect it ſhould take, *per Scroggs*, who cited the caſe of *Snow* and *Cutler*, 19 *Car. B. R.* But *North* anſwered, that *then* there muſt be an apparent intent of the deviſor, that it ſhould not till a certain time, notwithſtanding the particular eſtate determines; and that he ſaid was the caſe of *Snow* and *Cutler*,——for there the deviſe was to the heir of *J. S.* when he comes to the age of fourteen years. *Hil.* 1677, *vide* 1 *Freem. Rep.* 244.

A will ſhall *never* operate by way of *executory* deviſe, *if* it may take effect by way of remainder, *i. e.* if there is a particular eſtate ſufficient to ſupport it. *Carth.* 310.

Favourable diſtinctions have been always admitted, to ſupply the meaning of men in their laſt wills; (*a*) therefore a deviſe to *A.* till he

Vide Bur. 1. *V.* 233, 272. *T. Atk.* 4: 1, &c. 2 *Bur.* 770. 1106, *to* 1114. *ante* 30.

(*a*) Miſtakes in the making of wills are never to be ſuppoſed, if any conſtruction that is agreeable to reaſon can be found out. *T. Atk.* 1 *V.* 415.

he be of age, then to *B.* and his heirs,——this is an eſtate for years in *A.* with a remainder *in fee*, to *B.*——And if ſuch a deviſe to *A.* who is alſo made executor, or for payment of debts, it ſhall be for a certain term of years, *i. e.* for ſo long, as according to computation he might have attained that age, had he lived.—Contingent remainders are at the common law, and *ariſe on conveyances as well as wills;* one may limit an eſtate to *A.* the remainder to another;—and ſo it may be by deviſe, if the intent of the parties will have it ſo;—but as at the common law all contingent remainders ſhall *not* be good, ſo in wills, *no ſuch latitude is given, as if* NONE *could be had;*—THEY ARE SUBJECT TO THE SAME FATE IN WILLS, AS IN CONVEYANCES. An executory deviſe needs no particular eſtate to ſupport it, for *it ſhall deſcend to the heir till the contingency happen;* it is not like a remainder at common law, which muſt veſt *eo inſtante* that the particular eſtate determines: but the learning of executory deviſes ſtands on the reaſons of the *old* law, wherein *the intent of the deviſor is to be obſerved;* for, when it appears by the will, that he intends *not* the deviſee to take but *in futuro*, and no diſpoſition being made thereof in the mean time, *it ſhall then deſcend to the heir—till the contingency happens;* but if the intent be that he ſhall take *in præſenti*, and there is no incapacity in him to do it, he ſhall not take *in futuro* by an executory deviſe. 2 *Mod.* 291, 292.

Therefore,

Therefore, every clauſe in a will ſhall be conſtrued ſo as to take effect according to the teſtator's intent, if it is conſiſtent with the rules of law. *Atk.* 1 *Vol.* 416.

Tho' a perſon's name may be miſtaken in a deviſe, yet if made out by averment to be the perſon *meant*, the deviſe to him is good. Any thing that amounts to a *deſignatio perſonæ* is ſufficient. *ib.* 410.

A general introductory clauſe *is a key* TO EXPLAIN particular deviſes in the will. *Annaly* 143.

Negative words in a will, will not diſinherit the heir, but they are proper to explain other parts of the will. *ib.*

See where, by the reverſion of the lands, out of which grounds rents were reverſed, paſſed by the deviſe of the teſtator's ground rents. *ib.* 144.

By the civil law, when a teſtator *bequeaths* a *certain* thing, which he ſpecifies as being *his own*, the legacy will *not* have its effect, unleſs *that* thing be found *extant* in the ſucceſſion.—For example, if the teſtator ſays, "I bequeath to ſuch a one *my* watch, or, "*my* diamond ring," and there is not found in the ſucceſſion, either watch, or diamond ring, the legacy will be NULL. But, if he ſaith, "I bequeath *a* diamond ring, or, *a* watch," the legacy *will be due*, and have its effect. *Domat* 2 *V.* 159. *ſ.* 21.

In caſe of executory deviſes *there can be* NO LIMITATIONS *over*. 4 *Mod.* 259.

One deviſes all his lands, *after the death of his executors*, to *A.* and his heirs for ever; but, if he dies, leaving no ſon, then to *B.* This is a good *executory* deviſe to *B.* if *A.* dies without iſſue, becauſe *the contingency* MUST *happen within the compaſs of a life*, ſo no danger of a perpetuity. *Prec. in Chan.* 67.

An executory deviſe to ariſe within the compaſs of a REASONABLE *time*—IS GOOD; twenty, nay thirty years have been thought a reaſonable time; ſo in the compaſs of a life, or lives;——for *let the lives be ever ſo many*, THERE MUST BE A SURVIVOR, ſo it is but a length of *that* life; but the court were for not going one ſtep farther, becauſe *theſe limitations make the eſtate unalienable*,—EVERY EXECUTORY DEVISE BEING A PERPETUITY, AS FAR AS IT GOES, *viz.* an eſtate unalienable, tho' all mankind join in the conveyance. *Salk.* 229.

Deviſe to the *firſt* iſſue-male of *A.* (*A.* having *none* at that time) IS VOID. *Vide Ca. in B. R. temp. W.* 3. 278. *Salk.* 229.

J. S. being tenant for life, with remainder to his wife for life, remainder to his own right heirs, made his will thus, "*Item*, "my land at *W.* my wife *M.* is to enjoy for "her *life*, after her death it *of right* goes to "my daughter *Elizabeth* for ever, *provided* "*ſhe has heirs*; but if my daughter dies be- "fore her mother, or without heirs; and "my wife *M.* ſhall marry again, and have "heirs-male, I bequeath all my ſaid right "in *W.* &c. *to* HER *heirs-male by her* SECOND "*huſband*, thinking I can never ſufficiently reward

" reward her love; provided if my ſaid " wife ſhould marry again, and fail of heirs- " male, and my daughter ſhould fail of " heirs, then I deviſe 50*l.* annuity out of " *W.* &c. to my brother *D. S.*" And deviſed other annuities charged on the lands to ſeveral perſons, *who were his heirs at law*, but HE MADE NO DEVISE OF THE LAND TO ANY ONE. The wife married a ſecond huſband, and had iſſue-male, but died before *Elizabeth* the daughter, who died without heirs.——In ejectment, *the leſſors of the plaintiff were* HEIRS AT LAW,——the defendant was the heir *male* of the *wife* by the *ſecond* huſband.——On the trial a caſe was made for the opinion of the court: firſt objection was,—that the *firſt clauſe* was a deviſe to the daughter *in fee*, yet that was afterwards controuled and qualified by ſubſequent words, and it was intended to be *to her and the heirs of her body* ONLY. *Per cur'*, The perſon to whom the deviſe over is, *i. e.* Heirs male of the body of the wife by the *ſecond* huſband, HE IS A STRANGER, and where the deviſe over is to a ſtranger, THAT *will not alter the conſtruction of the will from what it would have been without it*;—ſo that it will continue *a deviſe to E. in* FEE-SIMPLE; ſo is 2 *Cro.* 415. and it is law now, and not to be drawn in queſtion, tho' it was once diſputed.—A deviſe to a *ſtranger* will *not* alter a *poſitive* deviſe to a perſon and his heirs. —But when this deviſe is over of a rent-charge, or annuities charged on land to the heir at law, and ſhews *what* was meant by *heirs* in the firſt place, then it will be a de-

viſe to *E.* and *the heirs of* HER BODY, remainder to the heirs-male of the body of the wife, with a deviſe over to theſe annuitants;—and there is no difference, whether the deviſe over be of the lands, or of an annuity charged on them, becauſe *in the laſt place he could never intend the lands themſelves ſhould paſs to the perſons to whom he had given the annuities*—Secondly, *per Cur'*, the firſt clauſe is *not* a deviſe to the wife, or to *E.* for they were ſettled on her for life,—and what is ſaid as to the daughter, is only a declaration of the deviſor what the eſtate and condition of the eſtate was, and how ſhe was to enjoy it; and he could not ſay *of right* (he) was to enjoy them, if ſhe claimed under the will:—the conſequence of this is, that *the lands deſcended to E.* AS HEIR AT LAW, and the deviſe to the heirs-males of the wife by a ſecond huſband will be contingent; firſt, Whether *E.* ſhould die in the life-time of the wife, (which muſt happen within the compaſs of a life;)—next contingency, if the wife ſhould marry, *&c.* and have heirs of her body by a ſecond huſband.——But tho' (as in *Lloyd* and *Cary's* caſe,) ſhe might have heirs after his death, and not within the compaſs of a life, yet *ſo near*, as there could be no inconvenience, if it ſhould take effect (*as*) an executory deviſe in ſuch a caſe. But this is not ſo here; for if the words are taken disjunctively,—*if my daughter dies in the lifetime of her mother*, or *without heirs*,—the contingency never happened, becauſe *the daughter ſurvived the mother;* ſo the deviſe could never take effect

effect, but will be void.—If taken copulatively, and *(or)* taken for *(and)*—it will be hard to turn words out of their natural ſenſe and import, unleſs there be *a plain* intimation of the intent of the deviſor ſo to do. How doth the deviſor intend it copulatively? What occaſion is there for it? For if the daughter ſurvived the mother, he might intend it for her *in fee;* why ſhould it be taken, if my daughter dies without heirs in the life-time of *Eliz.* (*a*)? Thirdly, if it were ſo, the deviſe over cannot take effect, becauſe *the contingency never happened.* Fourthly, the death of the daughter without heirs, is too remote, and deviſe over is *void.* The deviſe of the annuities is to take effect *in the nature of a remainder;* and if the firſt cannot take effect, all that comes after it cannot take place, it being not to take effect but *as* a remainder, and *then* not at all: next—if the wife ſhould marry again, and have a ſon, and ſhould die without heirs males,—this is *all* too remote, ſo the deviſe over is void, becauſe *to commence on a contingency too remote;* and if it cannot be good by way of executory deviſe, then it muſt be by way of remainder; and——it cannot be good as a remainder; becauſe *there is no particular eſtate to ſupport it to any one;* for there was no particular eſtate at all, what went before being only *a declaration* of what did belong to the daughter, and as this contingent remainder had no particular eſtate antecedent to it, *it is void.* Not good as an executory deviſe, becauſe the contingency never happened,

(a) *Eliz. in the original.*

pened, or if it did happen, it was too remote, and ſo void, therefore THE HEIRS AT LAW *have a good title.*——Fifthly, If the ſon of the wife by the ſecond huſband could take, he would take a fee-ſimple, ſo that the teſtator was miſtaken in the law; for he thought he had deviſed to him but an eſtate-tail. Judgment for plaintiff, *E.* 7 *Geo.* 1. *B. R. Wright* and *Hammond*, 2 *Abr. Eq.* 338. *pl.* 11. *Vin. Abr.* tit. *Deviſe* (L. 2.) *Ca.* 32. S. C. *in totidem verbis.*

A. ſeiſed in fee has two ſons, *B.* and *C.* both unmarried, and deviſes his lands to truſtees for five hundred years, in truſt to pay 50*l. per annum* to his eldeſt ſon *B.* for life, with power of diſtreſs, and on ſeveral other truſts (ſome of which are remote) remainder to the firſt and every other ſon of *B.* in tail, remainder to *C.* the ſecond ſon for life, remainder to his firſt, *&c.* ſon in tail, remainder over. By the better opinion, this is *a good executory deviſe to the firſt ſon of B.* T. 1722. *Gore* and *Gore*, in *B. R.* 2 *Will.* 28.

A. deviſed a term for years to his wife for life, remainder to his ſon and daughter; this is an *executory* deviſe. 2 *Mod. Ca. in Law and Eq.* 101.

A. ſeiſed in fee, and having three ſons, (*G. E.* and *R.*) deviſed *Blackacre* to *G.* his eldeſt ſon and to his heirs,—*White-acre* to *E.* his ſecond ſon and his heirs,—and a rent-charge of 50*l. per annum* iſſuing out of *White-acre* to *R.* and his heirs; proviſo that if *either* of his ſons die without iſſue, the other

other *two living*, ſo as his eſtate in lands ſhould come to the other two ſons, *then the rent ſhould ceaſe.*—*G.* died, leaving iſſue the defendant, and *R.* died *ſans* iſſue; ſo this contingency could never happen, becauſe *G.* had iſſue, and he being dead, and *R.* alſo without iſſue, their eſtates in lands could never come to two, where *E. alone* was ſurviving;——*ergo* the rent charge muſt deſcend to defendant *as heir at law*, being the ſon of *G.* the eldeſt ſon of the teſtator, for *this is an executory deviſe to two, on the contingency of one dying in the life-time of the other two*, which contingency muſt ariſe within the compaſs of one life,——otherwiſe it is void;——it is plain the teſtator intended this benefit of ſurvivorſhip during his *ſons* lives only. Judgment for defendant. 1 *Mod. Ca. in Law and Eq.* 347.

Deviſe of a perſonal eſtate to *A.* for life, and afterwards for her children, the yearly intereſt and produce to be for their maintenance, until the ſons ſhould be twenty-one, and the daughters eighteen, at which reſpective ages their reſpective portions to be paid them, and for want of ſuch iſſue, then to *B.*——*A.* dies without iſſue, the deviſe over to *B.* good, the words [*for want of ſuch iſſue*] being the ſame as [*for want of ſuch children*]. 2 *Will. Rep.* 421.

A conſtruction in favour of executory deviſes to ſupport the intent of the teſtator, will be made either in the courts of law or equity,——if it may be done conſiſtently with

with the rules of law. *Ca. in Eq. temp. Talbot* 44.

An executory deviſe of an eſtate of inheritance to a grandſon *unborn*, when he ſhall attain the age of twenty-one years, *is good*, and there is no danger of a perpetuity. *ib.*

Teſtator deviſed to *A.* and his heirs, and if he die before twenty-one, then to *B.* and his heirs ;—*A.* died before twenty-one, but *B.* died *before* him, yet *B.*'s heir may take under the executory deviſe. *Vide* 2 *Abr. Eq.* 342. *c.* 21. cites *Vin. Abr.* tit. *Deviſe.* (L. 2.) *ca.* 38.

In the caſe of *King* and *Withers* (11 *July* 1735.) a contingent deviſe of a perſonal eſtate was held to be *not* a poſſibility only, but an intereſt *veſted* and tranſmiſſible, *per* Lord *Talbot*, and affirmed *in Dom' Proc'*. *Ibid.*

How far the words of a will ſhall be ſaid to convey croſs remainders, or not. See *Annaly*, 22.

5th. *Of terms for years, and uncertain intereſt.*

IF a man deviſes land to his executors for payment of his debts, and *until they are paid, the remainder over*;——there is no doubt, but the remainder is good; but the queſtion was, "*What eſtate the executors had?*" For there being no *particular* eſtate expreſſed, if they ſhould adjudge an eſtate for life, *then* their eſtate might determine *before* they received ſufficient to anſwer the end of the deviſe; for on their death it could not go to their executors:——therefore it was adjudged an *uncertain* intereſt, *which ſhould go from executors to executors* FOR PAYMENT OF DEBTS. 8 *Co.* 69. *a.* *Cro. Eliz.* 315. 1 *Ro. Ab.* 829. *Co. Lit.* 112. *b.* 236. *a.*

If a man poſſeſſed of a term for years deviſes the lands to another *generally*;——the deviſee ſhall have *all* the term *without any limitation* to determine on his death. 1 *Ro. Abr.* 831.

A. deviſes his lands to his executors *till his ſon comes of age*; the profits to be employed in the performance of his will; tho' the ſon dies before he be of age. yet *the intereſt of the executors continues till he* MIGHT *have been of age*, if he had lived; for ſince the intention of the deviſor governs in wills, it might deſtroy that, if the executors intereſt ceaſed on the death of the ſon; and it is reaſonable to believe that the teſtator, found on a computation, that the profits 3 *Co.* 20. *b.* 1 *Chanc. Caſes* 113.

fits of the land would in *that* time anſwer his debts, *&c.* ſo that this is a good deviſe of the term until the ſon ſhould be twenty-one, THO' HE DIED BEFORE.

Cro. Eliz. 252. For this reaſon it was adjudged between *Smith* and *Haveris*, that if a man deviſed land to his wife, *until his ſon was of age*, to provide his children with neceſſaries; that if the wife died *before* the ſon was of age, *her intereſt did not determine by her death*, becauſe it was *not* matter of mere confidence;——and, according to the judgment in *Dyer*, it ſhall go to *her* executors.

2 *Leon.* 221. But if the deviſe had been. that the land ſhould *deſcend* to his ſon, but that his wife ſhould take the profits thereof *until the full age of his ſon*, for *his* education,——here is nothing deviſed to the wife, but *a mere confidence that ſhe ſhall take the profits for the education of her ſon;* and by the will ſhe is but in the nature of a guardian, or bailiff, for the benefit of the infant, *which determines by her death*, and her adminiſtrator ſhall not meddle.

4 *Co.* 82. *A.* deviſed his lands to *B.* and *C.* and the ſurvivor of them, until 800*l.* be raiſed out of his lands; it was adjudged, in *Corbet's* caſe, that *B.* and *C.* ſhould have the land no longer than they might have received *Cro. Eliz.* 800 out of it the profits; and if a ſtranger enters after the death of the deviſor, they may have their action for the meſne pro-

fits, but cannot hold the land longer than the ſum might have been levied; for if that were allowed, they might make it an eternal charge on the heirs eſtate; but if the heir himſelf enters and diſturbs them, they may hold over, for *the heir ſhall have no benefit of his own wrong*, or they may have their action againſt him, at their election.

A term was deviſed to *B.* and if he died within it, the reſidue to go to *C.* after he attained his age of twenty-one years, *B.* died, and then *C.* died before he came to that age: by this deviſe *B. had the whole term in him*; for if a termor deviſes his houſe or his term without more words, the deviſee has the whole term, and THE RESIDUE OF IT, WAS TO GO TO *C.* ON A PRECEDENT CONTINGENCY; which was when he came of age, which NEVER HAPPENED; conſequently his executors can never have it; and the executors of the deviſor have neither an intereſt nor a poſſibility of one, becauſe *he made a total diſpoſition of the term*; ——as if a copyholder for life, ſurrenders to the uſe of *B.* for life, who is admitted, and dies in the life of *A.*——*A.* ſhall have no benefit by ſurviving him, becauſe THE WHOLE INTEREST WAS SURRENDERED; therefore it was adjudged in the principal caſe, that the executors of *B.* ſhould have the remainder of the term. 2 *Sal.* 151. 1 *Ro. Ab.* 831.

If a term for 1000 years be deviſed to *A.* the remainder to *B.* and the heirs of his body,——the *whole* term is veſted in A:—— and 3 *Lev.* 264, 265. *Douſe v. Earl.*

and *B.* has only *a poſſibility*, and *no intereſt veſts in him until the death of A.*——becauſe by the ſtrict rules of the common law, AN ESTATE OF FREEHOLD IS GREATER THAN ANY TERM FOR YEARS.

1 *Bulſtr.* 42. *Eyliff* v. *Chopley.* *Cro. Jac.* 259. *Yelvert.* 185. The reaſon of this, becauſe the entry of one jointenant is the entry of both.

A copyholder deviſed his lands to *A.* and *B.* his two ſons, and to the heirs of *their two* bodies begotten:—and wills that each of them ſhall enter at their *ſeveral* ages of twenty-one years; and that his executors ſhould take the profits *until they came to their ſeveral ages of twenty-one years*;—the executors may take the profits until they are *both* of full age; for the will is no more, than that his executors ſhall take the profits of the land *until* they accompliſh their ſeveral ages of twenty-one years, and *then* they ſhall have the land *jointly*.

6th. Of deviſes by implication.

THE law in conveying eſtates did *not* regularly ſuffer any to paſs by implication, becauſe it is *a manner* of transferring *no way agreeable to the plainneſs and ſolemnity of the law;*——as, if *A.* ſurrender to the uſe of *D.* and *B.* and the longeſt liver, and for want of iſſue to *B.* the remainder over to *C.*——this being a conveyance by law, was but an eſtate *for life* to *B.* and no eſtate-tail by implication; but, as there has been greater favour and latitude allowed in the diſpoſition of eſtates by will, and in conſtruction of the judges, to ſupport the intent of the deviſor, *where it is very apparent*, have admitted eſtates by implication, tho' to the diſinheritance of the heir at law. *Vaugh.* 261.

As if *A.* deviſes his land to his heir, after the death of his wife, this is a good deviſe to the wife for her *life*, by implication; for by the expreſs words of the will, the heir is *not* to have it during her life; and if the wife has it not, none elſe can; for the executors cannot meddle with it; but they doubted in *Horton's* caſe in *Cro. Jac.* if the deviſe had been to *a ſtranger* after the death of the wife, whether ſhe ſhould take *any* eſtate; for that is but a demonſtration when the eſtate of a ſtranger ſhall commence, and *it ſhall go to the heir in the mean time*, who ought

2 *Leon.* 260. 1 *Ro. Abr.* 843. 13 *H.* 7. 17. *b.* *Cro. Jac.* 75. *Rep in Eq.* 39. *Boutell* v. *Mohun & Tilden.* *Bro. Dev.* 52. 2 *Sid.* 53. *Vaugh.* 265. 2 *Lev.* 207. *Smartle* v. *Scholar.*

ought not to be diſinherited without the apparent intent of the deviſor;——the authority of *Brook* is directly againſt that opinion; for, he ſays, if a man wills that I ſhall have his land after the death of his wife, that *ſhe hath an eſtate for life* BY IMPLICATION; yet the later authorities have ſettled that point, and with GREAT REASON *have preſerved the right of the heir*, unleſs the implication neceſſarily excludes him, as it does in the principal caſe.

Vaugh. 262. *Cro. Car.* 378. But if a man deviſes all his paſture lands in *D.* to his youngeſt ſon; and alſo wills that all bargains, grants, *&c.* which he had from *C.* ſhould be to his youngeſt ſon and *th* *of his body*; here it was reſolved, *th* youngeſt ſon ſhould *not* have an eſtate-tail in the paſture of *D. by implication*; for THE WORDS OF A WILL TO DISINHERIT THE HEIR AT LAW, MUST BE VERY PLAIN, AND HAVE A CLEAR AND APPARENT INTENT;——and this at moſt could have been but a poſſible implication, that the deviſor might have intended his ſon an intail in the paſture; which is not ſufficient to deſtroy the plain title of deſcent to the heir at law.

Cro. Jac. 75. *Vaugh* 266. 1 *Ro. Ab.* 844. *A.* leaſes on condition that the leſſee ſhall not alien to any, *beſides his children*: ——The leſſee deviſes the term to *H.* his ſon, after the death of his wife;——it was adjudged that the deviſe was *no breach* of the condition, as the wife took no eſtate by implication, for there can be here but a poſſible implication at moſt, and ſince the intent

intent of the deviſor is the beſt rule to conſtrue wills by, it would be abſurd to ſay, that the deviſor intended to convey ſuch an eſtate which muſt forfeit his own;—— therefore the executors ſhall have it while the wife lives.

A man makes a perſon executor of all his goods, *lands* and chattels;——and leaves no lands, but lands of inheritance; theſe words will *not* paſs the lands to the executor, becauſe the heir ſhall not be diſinherited without a neceſſary implication in them, for they do not ſignify a diſpoſition of thoſe lands to the executor. *Rep. in Eq.* 137. *Piggot* v. *Penrice.*

Quære, If it had been deviſed to the executors after the death of the wife, ſhould ſhe have an eſtate for life;—or, ſhould the executors have it during her life, to perform his will, and after her death as legatees? *Cro. Jac.* 75. *Vaugh.* 361.

A. ſeiſed of a manor, part in demeſnes, and part in ſervices, deviſed all the demeſnes to his wife, *expreſsly* for life, and all the ſervices for fifteen years, and then deviſed the whole manor to a ſtranger after her death; it was reſolved, That *the laſt deviſe ſhould* NOT *take effect till* AFTER *her death*; and yet ſhe ſhould not have the ſervices for her life by implication, but that the heir ſhould enjoy the ſervices after the fifteen years, while ſhe ſtill lived; for there appears no neceſſary implication, that ſhe ſhould have the whole for her life, with an excluſion of the heir, and a *poſſible* implication is not ſufficient to exclude him: for nothing but the *Moor pl.* 24. *Vaugh.* 265.

apparent

apparent intent of the deviſor can do that; ——but, if the deviſor had ſaid, That after the death of his wife *and* the ſtranger, the heir ſhould have the manor; *there* the wife by *neceſſary* implication ſhall have the *whole* manor for her *life*; for the deviſor's intent is plain, That the heir is not to have the manor while the ſtranger and the wife live, and the ſtranger cannot take any thing while ſhe lives.

Cro. Eliz. 16. From this it appears that the rule, *viz.* ——WHERE A DEVISEE TAKES ANY THING BY AN EXPRESS DEVISE, HE SHALL NOT HAVE ANY OTHER THING DEVISED BY THE SAME WILL BY AN IMPLICATION,——is deſtroyed by the diſtinction of a *neceſſary* and a *poſſible* implication; for the former caſe proves that *a neceſſary implication will give an eſtate, tho' the deviſee took by an expreſs deviſe before*,—— and, a *poſſible* implication is ſufficient in *no* caſe to convey an eſtate in diſinheriſon of the heir, for that is the principal point between *Gardiner* and *Sheldon in Vaughan*, where the words of the will appear to be, ——" That in caſe my ſon *G.* and *M.* and " *K.* my daughters, die without iſſue of " their bodies, then my lands to remain " to my nephew W." It was judged, that the deviſe to *G.* being ſon and heir, was *void*, and that the daughters took *no* eſtate by that poſſible implication; but their dying without iſſue is only a deſignation of the time *when* the nephew is to take.

A. deviſed to his wife 600*l.* to be paid to *J. S.* for the payment of the lands he purchaſed

chaſed of him, and are already ſettled on her for her jointure;——the lands were *not* ſettled on her; adjudged they did *not paſs* by the will, by implication; for there appears no intent that ſhe ſhould have them by the will, conſequently they cannot paſs from the heir at law by implication; ſo that the deviſor was only miſtaken as to the ſettlement of them in his life-time.

A. deviſed all his eſtate, real and perſonal, for payment of debts and legacies, and devised 100*l.* to his heir at law. This was decreed a good deviſe *in fee*, but no implied truſt aroſe to the heir at law for the ſurplus; for by that conſtruction the deviſee would have no benefit by the deviſe; beſides the legacy of 100*l.* to the heir at law, is in this caſe *an excluſion* of the heir from any further benefit. 1 *Ch. Ca.* 196 197. *North.* v. *Crompton.*

A. has ſons, *B.* and *C.* and deviſes part of his lands to *B.* in tail, and the other part to *C.* in tail, and if any of his ſons died without iſſue, that the whole land ſhould remain to *a ſtranger* in fee;——*C.* died, yet the ſtranger could *not* enter into *his* part, for the other brother took it by implication, the words of the will being, "*That* "*the whole land ſhould remain to a ſtranger,*" which he cannot have while *either* of the ſons or any iſſue of their body be living.

Another rule relating to deviſes by implication is this.——That, *where the deviſee takes a* PARTICULAR *eſtate of inheritance by* EXPRESS *words in the will,——ſuch eſtate ſhall*

NOT

NOT *be* ENLARGED *by implication*; for ſince deviſes by implication are allowed in favour to wills, that is *where the intention of the teſtator may be* PRESUMED, the judges will ſupport it, tho' it be *not* expreſſed in plain words,——yet there is no room for ſuch conſtruction where the deviſee hath an eſtate given him by *expreſs* words in the will; for that would be to over-rule the plain meaning of the teſtator againſt his own words. Therefore if *A.* deviſes to *B.* for life, the remainder to *C.* and the heirs-male of his body; and if it ſhall happen that *C. die without heirs* of his body, then the remainder to *D.*——This is but an eſtate in *tail-male* to *C.* becauſe that eſtate being given to him by *expreſs* words, ought *not* to be over-ruled by implication, that the teſtator intended him a greater eſtate by the words, "*If he chance to die without heirs of his* "*body.*"

Dyer 17, 12. *Bend. pl.* 114. *Moor* 113. 1 *Lev.* 226. 1 *Ventr.* 230.

A deviſe to *A.* and *his heirs-male*, and if he dies without heirs of his body, then to remain to *B.* in fee. This too is but an eſtate in *tail-male* to *A.*——for the law ſupplies the words "*of his body*;" and ſince the deviſor only gave it by *expreſs* words to him and *his* heirs-male, it would be againſt his plain words, to let in his iſſue female by implication, on the other words, *viz.* If he dies without *heir* of his body.

1 *Bulſt.* 63. *Dyer in Mar.* 171. *a.*

A. having iſſue a ſon and two daughters by ſeveral venters,—the ſon died leaving two daughters;—and *then A.* deviſes *one* of his

Bendl. 212. *Clatche's* caſe. *Dyer* 330. *b.* *Vaugh.* 267.

his meſſuages to *B.* his own daughter, and her heirs for ever, and his other meſſuage to *C.* his daughter, and her heirs for ever; and if *B.* died without iſſue, living *C.* then *C.* ſhould have *B*'s part to her and her heirs; and if *C.* die before the age of ſixteen years, then *B.* ſhould have her part in fee; and if both his ſaid daughters ſhould die without iſſue of their bodies, *then his grand-daughters ſhould have the meſſuages.*——*C.* died without iſſue, having paſſed her age of ſixteen years. The grand-daughters had judgment for *her* part; and the words of the will, *viz.* "If his two daughters died "without iſſue of their bodies," did *not* create croſs remainders of each other's part by implication, but *only denoted the time when the heirs at law ſhould have the meſſuages.* For, (ſays the book,) No ſuch implication will ſerve when there is an *expreſs* gift and limitation will ſerve when there is an *expreſs* gift and limitation made to the deviſees by the teſtator himſelf.

A. had three ſons, *B. C.* and *D.* and deviſed lands to *C.* and *D.* and if *C.* dies without heirs, *D.* ſhall have his part, and if *D.* dies without heirs, *B.* ſhall have it. The queſtion was, "*What eſtate D.* "*had in this moiety?* For it was agreed "that *C.* had an *eſtate-tail by implication*, by "force of the words ſubſequent to the deviſe, *i. e.* "and if *C.* die without, *&c.*" *Nudigate* argued, That if the teſtator had gone no farther, but only ſaid, I deviſe theſe lands to *C.* and *D.*——neither of them had had but an eſtate *for life;* and then, when the teſtator by ſubſequent words enlarges

the eſtate of one of them, and retains it to the part of one of them, (by ſaying *B.* ſhall have *it*) the word "*it*" ſhall relate *only* to *C.*'s part, that was before deviſed to D. if *C.* dies without heirs.——The court inclined to this opinion, That *D.* had but an eſtate *for life* in his moieties, becauſe *implications that carry eſtates* OUGHT TO BE PLAIN AND STRONG,——ſo gave judgment *niſi.* 1 *Freem. Rep.* 85.

Where an eſtate is created by implication, it muſt be a *neceſſary* implication,——as, a deviſe to the heir *after* the death of wife, the wife takes an eſtate *for life* by implication, becauſe it is *plain* his intent was, that the heir ſhould not have *it* till *after* her death. *Per Ld. Keeper.* 2 *Freem.* 470.

An implication in a deviſe to *diſinherit* an heir, muſt even AT LAW be a *neceſſary* implication. *Prec' in Chan'* 184.

Where an intail is granted by implication, it is *ever in favour of an heir at law*, to whom no eſtate being given by the will, ſo as to enable him to take by purchaſe; and there being a neceſſity if he takes at all, of his taking *by deſcent*;——therefore to ſupport the intention of the teſtator, that the heir ſhould take, *the law creates* BY IMPLICATION *an eſtate-tail in the anceſtor, to veſt it in the iſſue by deſcent.*——But where there is a proviſion *how* it ſhall go to the iſſue, this reaſon entirely *ceaſes*. *Lucas's Rep.* 403.

Deviſe of land to the teſtator's ſecond ſon, for his life,——he, or his heirs, paying

ing a rent thereout to the eldeſt ſon for his life, and after the death of the ſecond ſon *and his heirs wife*, remainder to the firſt, *&c.* ſon of the ſecond ſon——The wife of the ſecond ſon had an eſtate *for life* by *implication*, by the opinion of Ld. C. *Parker*, *T.* 1718. *Willis* and *Lucas*, 1 *Will. Rep.* 472.——But this point was referred to the judges of *B. R. Ibid.* 476.

A deviſe that if *William* the eldeſt ſon of the teſtator ſhould happen to die without iſſue, that *then* and not otherwiſe, after *William's* death, he deviſed it over to his ſon *Richard* and his heirs;——held that *William* took an eſtate-tail by *implication*. *Comyns's Rep.* 372.

Deviſe of a perſonal eſtate to a daughter by a ſecond wife, and if ſhe died before twenty-one, or marriage, and his daughter by his firſt wife ſhould have one or more ſons, *then* the teſtator bequeathed his perſonal eſtate to ſuch ſon as ſhould firſt attain the age of twenty-one; but if no ſuch ſon, then to *J. S.*——The daughter by his ſecond wife died under twenty-one, and unmarried.——The daughter by the firſt wife had a ſon, during whoſe infancy a bill is brought to have the produce of the perſonal eſtate placed out and improved for his benefit. The court declared, That all the intereſt, income and profits that had ariſen, or ſhould ariſe from the ſaid eſtate, from the death of the teſtator's daughter by his ſecond wife, ought from time to time to

be accumulated, added to, and go along with the ſurplus; and that in caſe the plaintiff died before twenty-one, the intereſt, income and ſurplus, *muſt* go and belong to ſuch perſon and perſons, as ſhould be intitled thereto, according to the contingencies mentioned in the teſtator's will. 3 *Will. Rep.* 306. by way of note.

7th. What circumſtances are neceſſary by 32 *Hen.* 8. *and* 29 *Car.* 2. *(a)* &c.

IN the circumſtances of a will, the firſt that occurs is WRITING, this the ſtatute makes *abſolutely neceſſary* to be done in the LIFE of the teſtator,—the better I preſume, *to prevent all frauds and diſputes which this manner of conveyance will be liable to;* but here it will be neceſſary to diſtinguiſh between the frauds which concern lands in military tenure, and thoſe of burgage-tenure and gavel-kind;——the former ſort,

(a) Although the judges are favourable in their conſtructions of wills, that if poſſible, *the intention of the teſtator* may prevail; yet where the teſtator makes the diſpoſition of his eſtate *as the law would have done, had he been ſilent*, or where his diſpoſition is made in ſuch general terms, that his intention is altogether *doubtful* and uncertain, and cannot be collected from the words of the will; or where the teſtator is eſtabliſhing a ſettlement againſt the reaſon and policy of the law; in theſe caſes the judges have thought fit to reject the will. 2 *New. Abr. of the Law* 79.

for

for the reaſons before noted, were *not* deviſeable until the ſtatute 32 *Hen.* 8. therefore, the circumſtances which it appoints in this new diſpoſition of land *muſt* be obſerved; but theſe are *not requiſite in deviſing the* LATTER;———for the people of *Kent*, (where the cuſtom of gravel-kind moſt prevails,) happily ſecured their land from any innovation of the conqueror; ſo that AFTER THE CONQUEST THEY STILL CONTINUED FREE, and not ſubject to the feudal duties, the preſervation of which hindered the diſpoſition of other lands; therefore *that* people ſtill continued their old power and cuſtom to diſpoſe of their lands according to the *natural* notion of property by will, or alienation; ſo that *lands of this tenure* are NOT SUBJECT to the circumſtances required by *that* ſtatute, becauſe *they were deviſeable* BEFORE.

For the ſame reaſons, lands of *burgage-tenure* might *after* that ſtatute have been deviſeable by will *nuncupative;* for whoever had the ſeigniory of theſe lands, the fee-ſimple ſeems generally to have been in the corporation, which rather *intended the improvement of trade, than the military ſervices;* and as an encouragement to *that*, the inhabitants or tenants of thoſe boroughs were allowed to diſpoſe of thoſe lands by will, for proviſions of *younger* ſons; the eldeſt being generally ſettled in his father's trade in his life-time, conſequently provided for. *Co. Lit.* 111.

A. declares to *B.* his will was, That *C.* ſhould have his lands;——*B.* recited the words, *Cro. Eliz.* 109

words, and aſked *A.* if *that* was his will, who anſwered *it was.*——*B.* wrote down the words *without* the appointment and conſent of *A.* in his life;——this was adjudged a *void* deviſe *within the ſtatute*, becauſe it was not only done *without the conſent* or command of the deviſor, but of the party's own head;—if *B.* had wrote the will, and afterwards had read it to *A.* who had agreed, this *ſubſequent* aſſent had made it as valid, as if it had been *firſt* wrote by his appointment.

Moor pl. 314. If a man expreſſes in *a letter*, that his land after his death ſhall go after ſuch a manner; this *has* been adjudged a good deviſe.

Beſides the circumſtance of writing, called the inception, there are others to be conſidered, *viz.* the progreſſion or publication, and conſummation *by death*, of the teſtator; and we muſt carefully conſider his *ability* and *intent* at each of theſe times.

3 *Co.* 31. *a.* *Pl. Com* 344. *b.* For if *A.* be ſeiſed of ten acres in fee, and deviſes *all* his lands to *B.* and *then* purchaſes *Black-acre*;——this ſhall *not* paſs by the will, according to the judgment in *Brett* and *Rigdon's* caſe, for the ſtatute only impowers perſons *having** lands to deviſe: *A.* had not *Black-acre* at the making his will, therefore

* The words of the Stat. (32 *Hen.* 8. *c.* 1.) being, that "all and every perſon and perſons *having*, or which "hereafter *ſhall have* any manors, *&c.* ſhall have full "and free liberty, *&c.* to give, diſpoſe, *will*, and de-"viſe, &c."

therefore not within the ſtatute; and ſince the intent of the deviſor is the beſt rule in wills, it is reaſonable to conclude, that he *never* deſigned to convey *Black-acre*, for he had it not in his power *when* he ſettled the diſpoſition of his other poſſeſſions.——But if *A.* by will had deviſed the manor of *Dale*, or *Black-acre*, particularly ſpecified, and *afterwards purchaſed* it; this deviſe, they ſay, *may* carry the purchaſed land, tho' the deviſor had it not *at* the time he made his will,——for there appears to be his *intent* to purchaſe it for *that* end; ſo if in the former caſe he had publiſhed the will *after* the purchaſe, *that* would carry the land, for *publication of a will amounts in law to a making*, and ſo is in the nature of a *new* will. *Pl. Com.* 344. a. *Ventr.* 241.

If a man *orders* another to write his will, and to give *Black-acre* to *J. S.* and his heirs; and *White-acre* to *J. N.* and his heirs;—— the writer ſets down the deviſe to *J. S.* but *before* the deviſe to *J. N.* is written the deviſor *dies*.———Theſe being ſeveral and diſtinct deviſes, *J. S.* may claim his, becauſe *it was fully expreſſed and written according to the intent of the deviſor*; but if the writer had ſet down a deviſe in fee, where the deviſor only intended an eſtate for life; or if he had made an eſtate on condition, where the deviſor mentioned an abſolute eſtate; *theſe are void deviſes*,—becauſe they are no way correſpondent to the intent of the deviſor;—but if, in this laſt caſe, the deviſor on reading the will had diſallowed the 3 *Co.* 31. *b.* *Moor* 51. *Cro. Eliz.* 100. 2 *Rol. Abr.* 617.

the condition as no part of his will, but that it ſhould ſtand good for the reſt; *this had made the eſtate abſolute*, according to the firſt intent of the deviſor, tho' there had been no alteration in the will during his life.

1 *Chan. Cuſ.* 39. *A.* agrees with *B.* for the purchaſe of copyhold lands, which were ſurrendered *out* of court to the uſe of *A.*—but before admittance *A.* dies ſeiſed of *other* copyhold land, *having made his will ſubſequent to the contract*, and thereby deviſed *all* his copyhold land to *J. S.*——It was ruled in Chancery, that *the copyhold agreed for, paſſed by the will;* for after agreement the purchaſer might in equity recover the land, and oblige *B.* to execute a conveyance; and until ſuch conveyance executed, the vendor ſtood *ſeiſed in truſt* for the purchaſer *as he ſhould appoint;* therefore if, after articles agreed on, for a purchaſe, the purchaſer deviſes the lands, and dies *before* conveyance executed, yet *the land paſſeth in equity;* for tho' according to *ſtrict* notions of law, the deviſor hath not lands *within the ſtatute* until a conveyance executed, whereby he becomes ſeiſed of them; yet *after* the articles of purchaſe, the purchaſer is *only* conſidered as maſter of the land, therefore *in equity* will be allowed to diſpoſe of it.

[*What amounts to a new publication, and the effects thereof.*]

Pollexf. 548. 1 *Ventr.* 341. *Pl. Com.* 344. A new publication of a will is, *in effect* making it a new will; ſo that, after ſuch publication,

publication, it has the force and operation of a will *juſt made* at the time of ſuch publication.—Therefore if a man deviſeth *all* his lands, and *afterwards* purchaſes *other* lands, and *then* new publiſhes his will; this new publication has made it a new will, conſequently by the deviſe of *all* his lands *the new purchaſed lands ſhall paſs;* for there is no neceſſity to make any alteration in the will, becauſe the words are ſufficient on the new publication, to carry *all* the lands he is ſeiſed of *at* the time of publication. *Moor* 404. 1 *Ro. Abr.* 617. *Cro. Eliz.* 493

But this muſt be underſtood with this limitation, that—*the words of the will at the time of the new publication be proper to convey, and ſufficiently denote the perſon of the deviſee*; for, if there be *any* change between the time of firſt making the will, and the new publication; in ſuch caſe, the publication will *not* alter the original intention of the deviſor, nor the import of the words of the will, ſo as to make the perſons named in the will, take in a *different* manner, than was *intended* by the original words of the will;——therefore if a man deviſes land to *J. S.* and his heirs, and *J. S.* dies in the life of the deviſor, a new publication will not make the heir of *J. S.* take by the will; becauſe tho' the deviſe was to *J. S.* and *his* heirs, and from thence it appears to be the intention of the deviſor, that his heirs ſhould have the land, yet as they were named in the will to take *by deſcent* and limitation of eſtate, and *not as a deſignation* of the perſon who ſhould take immediately, *Pl. Com.* 345. *a. Bretts* v. *Rigdon.* 1 *Ventr.* 341.

immediately, the deviſe was void, and the new publication could not make it good, publication makes no alteration in the will, and has *no other* effect than this,——That if the words be *proper* to convey and *deſcribe* the perſon to take, *it makes that will*, tho' of ever ſo long a date, *to be as perfectly new as if but then made.*

Pl. Com. 345. *Bretts* v. *Rigdon.* *Cro. Eliz.* 422. *Moor* 353.

Nor would it be any alteration in the caſe, if the teſtator at the time of the new publication, had taken notice of the death of *J. S.* and thereupon had ſaid, that the heir of *J. S.* ſhould be *his* heir, and have all the lands which *J. S.* ſhould have had, if he had ſurvived the deviſor;—for ſuch words being never put into writing (which the law *only* takes notice of) are of no effect.

1 *Vent.* 341. *Steed* v. *Berrier.* *Pollexf.* 346. 2 *Jones* 135. *Raym.* 408. 1 *Mod.* 267. 2 *Mod.* 313. 3 *Keb.* 845. 2 *Lev.* 243.

J. S. made his will in writing, and deviſed lands to his ſon *J. S.* and *his* heirs. The ſon died afterwards in the life of the teſtator,—after whoſe death *J. S.* made a codicil, by which he gave part of the lands deviſed as aforeſaid, to a ſtranger, and afterwards declared *by parol*, that his grandſon *J. S.* ſhould have the land which *his* ſon *J. S.* ſhould have had;——yet neither the publication, nor the parol declaration, would carry the land to the grandſon; for *it is plain the grandſon was not to take originally by the will;* and it is as plain, that *the new publication makes no alteration in it;* and then the parol declaration being no part of the will, cannot change the deviſe from *J. S.* the ſon, to *J. S.* the grandſon; for—*no parol declaration can carry lands to one perſon, when*

when the words of the will plainly intend them to another; but when the deviſor has *two* ſons named JOHN,——*a parol averment* WILL BE ALLOWED *to prove* WHICH *of them* HE MEANT; for ſuch averment is conſiſtent with the will, and whether the elder or the younger takes, it is ſtill *John* the ſon who takes, according to the *letter* of the will.

If a man deviſes land, and afterwards aliens it to a ſtranger, and re-purchaſes it, and then ſhews his intention that the ſaid will ſhall ſtand as his *laſt* will; *this is a new publication and the land ſhall paſs as if it had never been aliened*; for the publication made it a new will, and the words, *of themſelves*, were ſufficient to carry the land without any addition. *Moor* 429. 1 *Ro. Abr.* 618. *Poph.* 105.

If a man deviſes the manor of *D.* to *J. S.* and then makes a feoffment to a ſtranger, but *no livery is made*, and afterwards the teſtator makes ſome other alteration in his will *with his own hand*, as changing his executors, and makes other alterations in the legacies given of his perſonal eſtate;—yet *this ſeems to be no new publication to paſs the manor of D.* for tho' the feoffee by omiſſion of livery, was only tenant at will, ſo that the deviſor had ſtill power to convey; yet THE FEOFFMENT WITHOUT LIVERY WAS A REVOCATION OF THE WILL; and the making a new executor, and giving legacies out of the perſonal eſtate, *having no relation to the land*, was *no* new publication to paſs the land, which was revoked by the feoffment. *Quære.* *Moor* 434. *Cro. Eliz.* 493. 1 *Ro. Ab.* 618. *Berkford* v. *Parrucott.*

But, if a man deviſes *all* his lands in *D.* and afterwards purchaſes *more* lands in *D.* and

and *J. S.* deſires to purchaſe from him the lands he bought laſt; but the deviſor refuſes, and ſays, *it ſhall go to the executors*, who were likewiſe the deviſees; and afterwards he annexes a codicil to his will, by which he makes a further diſpoſition of his perſonal eſtate, and then dies;—this is a ſufficient re-publication of his will *to paſs the new purchaſed lands*, for the original words of the will were ſufficient to carry the new purchaſed land; the annexing the codicil ſufficiently declared the teſtator's intention that it ſhould ſtand in its full extent.

The ſtatute 32 *Hen.* 8. *c.* 1. which firſt introduced this diſpoſition of land by will, did not tie a man down to the ceremonies of the civil law, (which in civil teſtaments required ſeven witneſſes;) but on that ſtatute, if it was written by the deviſor *himſelf*, or any other by his direction, *it was a good will within the act*. The legiſlators in this might probably have followed the reformation made in the ancient civil law by the *authenticks*, by which a father's teſtament amongſt his children was allowed to be good, if written by his own hand, or by his direction or command; but this liberty frequently encouraged forged wills, and ſubornation of witneſſes to prove them; to prevent which, the ſtatute of frauds and perjuries, a great and neceſſary law for the ſecurity of private property, has declared, that "all deviſes of *lands and tenements ſhall* "*be in writing*, and *ſigned by the party de-* "*viſing*, or ſome other in his preſence, and

29 *Car. c.* 3.

"by

" by his direction, and *ſubſcribed in his pre-*
" *ſence by three* or four witneſſes, or elſe
" ſhall be void."

And that no ſuch deviſe in writing ſhall be revocable, otherwiſe than *by writing*, burning, tearing or cancelling the ſame *by the teſtator*, or in his preſence, or by his conſent.

On this ſtatute, it has been ruled in equity, that a will of lands atteſted by three witneſſes, who ſubſcribed their names at the requeſt of the teſtator, *at ſeveral times*, is a good will, tho' the witneſſes were never once preſent together. 2 *Chan. Ca.* 109.

J. S. made his will, and wrote it with his own hand, and begun thus; " *I* J. S. " *make this my laſt will and teſtament;*" but did *not* ſubſcribe his name; this was adjudged a good will, and *ſufficient ſigning* by the teſtator, within the ſtatute to paſs lands, it being ſubſcribed by three witneſſes in the preſence of the teſtator; for his name being written in the will, it *muſt* be a ſufficient ſigning within the ſtatute, which has not appropriated any particular place in the will, either top, bottom, or margin, for that purpoſe: therefore the teſtator is at liberty to put it where he pleaſes. 3 *Lev.* 1. *Semain* v. *Stanley.*

If the deviſor *only* put his ſeal to the will without ſigning it, this ſeems to be a ſufficient ſigning within the ſtatute; becauſe ſigning is no more than a *mark* to diſtinguiſh a man's act, and ſealing is a ſufficient mark to know it to be his will. 3 *Lev.* 1. 1 *Show.* 69.

If a man makes his will, and ſigns it as the ſtatute directs, but the three witneſſes inſcribe their names in a room adjoining to where

where the teſtator lay, but *out of ſight*, ſo as he could *not ſee* them ſubſcribe their names; this is *no* good will within the ſtatute to paſs lands, becauſe the witneſſes did *not* ſubſcribe their names in the teſtator's preſence, as the ſtatute expreſsly directs.

A. makes his will, and *two* witneſſes ſubſcribe their names to it in his preſence; afterwards he makes a codicil, and by *that* confirms the will in what is *not* altered, and makes a diſpoſition *different* in ſome particulars from the will, and *one of the witneſſes to the will ſubſcribes the codicil with a third perſon*;——this is *no good* will within the ſtatute, becauſe not ſubſcribed by *three* witneſſes, for the third witneſs who ſubſcribed the codicil *is no witneſs to the will*, nor can he prove it; and THE THREE WITNESSES MUST SO SUBSCRIBE, AS TO BE ABLE TO PROVE THE WHOLE, which the third cannot do in this caſe, becauſe he is not witneſs to the will.

1 *Show.* 68, 88. *Lee* v. *Libb. Carth.* 35.

Money covenanted to be laid out in land ſhall deſcend *as land*; but he who is intitled to the fee when purchaſed, may diſpoſe of this money by will, though not atteſted by three witneſſes. 2 *Will. Rep*, 171.

Truſt of lands limited to *A.* and his heirs and aſſigns, or to ſuch as he, or they ſhall appoint; *ceſtuy que truſt* deviſes theſe lands by will, atteſted by two witneſſes, the will is *void*, and will not operate as an appointment. *Ibid.* 258.

A will

A will made beyond ſea, of lands in *England*, muſt be atteſted by *three* witneſſes. *Ibid.* 293.

A younger brother beyond ſea having contracted to buy a real eſtate of his elder brother, makes his will, charging the eſtate with great legacies; he dies without iſſue, and makes his elder brother, (who is his heir, executor.) The heir may retain out of the aſſets the purchaſe-money, tho' intitled to take the land again, as heir. *Ibid.* 29.

Lands purchaſed *after* a will were decreed to paſs purſuant *to* the will. *Vide Gilb. Rep. in Eq.* 11. *Lucas's Rep.* 26.

Copyhold ſurrendered to the uſe of a will ſhall paſs by a will, atteſted by one or two witneſſes only *it paſſing by the* SURRENDER. 2 *Will. Rep.* 258.—But a truſt, or equity of redemption of copyhold, can*not* paſs by ſuch will. *Ibid.*

A will, or writing revoking a former will *muſt* be ſubſcribed by *three* witneſſes, but this *need not* be in the preſence of the teſtator. 1 *Will.* 343. But in a will deviſing LAND, the three witneſſes *muſt* ſubſcribe in the preſence of the teſtator. *Ibid.*

Teſtatrix ſigned and publiſhed her will before *two* witneſſes, and next day produced the will to a third witneſs, and declared it to be her will, but did *not* ſay her name at the bottom was of her *own* hand-writing, nor ſigned it over again; but the cauſe was ordered

ordered to ſtand over. *Vide Barnardiſton's Rep. in Chan.* 455.

A witneſs to prove a will of *lands*, ought to prove that *the will was* EXECUTED *in* HIS *preſence*, and *alſo* in the preſence of the other two witneſſes, and that they *all* ſubſcribed in the preſence of the teſtator. 1 *Will.* 741.

Money agreed to be laid out and ſettled as land, may, if the teſtator deſcribes it as perſonal eſtate, paſs by a will *not* atteſted by three witneſſes. 3 *Will.* 221.

When a teſtator *owns* his hand before the three witneſſes, who ſubſcribe in his preſence, the will is good, tho' all of them did not ſee teſtator ſign the will. *Ibid.* 254.

Republication of a will of *lands*, muſt be before *three* witneſſes. *M. S. Notes.*

Teſtator ſays, "My will in the hands of "*A.* SHALL STAND;" this amounts to a good republication. 2 *Show.* 48.

New publication of a will is favoured in equity, and *ſlender* evidence will ſerve. *Vern.* 330.

A. makes his will, ſigns it, and declares it, in the preſence of *three* witneſſes, and then makes a feoffment in fee, or does other act which amount to a revocation, and *then* new publiſhes his will in the preſence of one or two witneſſes; this *may* be good. *Quære Skin*, 227.

A republication will paſs lands purchaſed *after* the will made, and before republication. 1 *Salk.* 238. But ſince the ſtatute, this

this *muſt* be in writing; *vide* 2 *Mod. Ca. in Law and Eq.* 78. and muſt have all neceſſary incidents; *vide Gilb.* 229.—Since the ſtatute of frauds, the *ſame* forms are neceſſary for the republiſhing of a will, as to the firſt making. 10 *Mod.* 98.

Making a codicil of perſonal eſtate, and annexing it to the will, cannot amount to a republication of *the will.* 2 *Vern.* 722.

A will revoked, may be ſet on foot again; by a codicil annexed thereunto;—By adding any thing to the will, or making a new executor;—By expreſs ſpeech or word, that it ſhould ſtand or be his will. *Went. Office of an Exec.* 24.

8th. *Of Revocations.*

WILLS and teſtaments being the *laſt* declaration of a teſtator's mind, in the diſpoſition of his eſtate, it follows that *they are unſtable and ambulatory until the death of the teſtator;* * and ſince the laſt declaration takes place, and is admitted to be the will of the teſtator, it muſt neceſſarily be a countermand and revocation of all, or ſo much of the former wills, as are inconſiſtent with, or contrary to, this laſt declaration of the teſtator's mind. Now we muſt inquire, *What acts of the teſtator will amount to a countermand, or revocation, of a will;* and this, either before or ſince the ſtatute of frauds and perjuries:——And it is neceſſary to obſerve, that tho' a perſon makes his laſt will and teſtament irrevocable in the ſtrongeſt words, yet he is at liberty to revoke it: becauſe, his own act or words cannot alter the diſpoſition of the law, ſo as to make that irrevocable, which is in its own nature revocable. 8 *Rep.* 82. For this

* No teſtaments is of any effect till after the death of the teſtators. "*Nam omne teſtamentum morte conſummatum* "*eſt; et voluntas teſtatoris eſt ambulatoria uſque ad mortem.*" *Co. Lit.* 112. Therefore, if there be many teſtaments, the *laſt* overthrows all the former. *Lit. ſ.* 168. *Perk.* 478. But the republication of a former will, *revokes* one of a *latter date*, and eſtabliſhes the firſt again. *Perk.* 479.

this ſaith Lord *Bacon*, (*Elem. c.* 19.) would be for a man to deprive himſelf of that, which of all other things is moſt incident to human condition; and that is, alteration or repentance. It hath alſo been held, that WITHOUT AN EXPRESS revocation, if a man, who *hath made* his will, *afterwards* marries and hath a child, *this* is a PRESUMPTIVE or IMPLIED REVOCATION of his former will, which he made in his ſtate of celibacy. *Lord. Raym.* 441. 1 *P. Wm's.* 304.

The *Romans* were alſo wont to ſet aſide teſtaments as being *inofficioſa*, deficient in natural duty, if they diſinherited, or totally paſſed by (without aſſigning a true and ſufficient reaſon) any of the children of the teſtator. 1 *Inſt.* 2. 18- 1. But if the child had any legacy, tho' ever ſo ſmall, it was a proof that the teſtator had not loſt his memory, or his reaſon, which otherwiſe the law PRESUMED; but was then ſuppoſed to have acted thus for ſome ſubſtantial cauſe: and in ſuch caſe no *querela inofficioſi teſtamenti* was allowed. Hence probably has ariſen that groundleſs vulgar error, of the neceſſity of leaving the heir *a* SHILLING, or ſome other *expreſs* legacy, in order to diſinherit him effectually: whereas the law of *England* makes no ſuch wild ſuppoſitions of forgetfulneſs or inſanity; and therefore tho' the heir or next of kin be totally omitted, it admits no *querela inofficioſi*, to ſet aſide ſuch a teſtament. But to proceed,

Before that ſtatute a will might have been revoked *by parol*, tho' never reduced into 1 *Rol.'s Abr.* 614. *Dyer* 310. *b*, *Cro. Jac.* 497.

into writing; becauſe words *deliberately* ſpoken by the teſtator, were looked on to be *as full* a declaration of his mind, as if they were wrote by him, or by his direction; therefore, where *a man revoked his will by parol* in the preſence of three witneſſes, *requiring them to take notice of that his preſent revocation*; * and further declared, that he would alter it when he came to *D*——before he got thither he was murdered;—the will was allowed to be revoked by theſe words, tho' never put in writing.

1 *Ro. Abr.* 615. 1 *Cro. Jac.* 497. *Cranwell* v. *Sanders.* *Moor pl.* 1222 2 *Sid.* 75. *Marriet* v. *Sly-Godolph,* 456.

But words in a *future* ſenſe are *not* ſufficient to revoke a will, as, if the teſtator ſays, that he *has* made his will, but that it ſhall *not* ſtand, or he *will* alter his will,——theſe amount to *no* revocation, for here is *only a declaration of what the teſtator intended to do*, but NO ACT DONE; and this is ſo far from being a revocation, that without any farther act purſuant to thoſe intentions, the preſumption ſeems rather to be, that he has altered them, conſequently the will ought to ſtand as if he had never ſpoken ſuch words.

1 *Ro. Abr.* 615.

So if a man deviſe land to *J. S.* and afterwards ſays he will make a feoffment of it to another;—this without any further act

* To revoke a will by *parol*, the words *muſt* be *in præſenti*.—And as a perſon ought to be of good and ſound memory at the time of diſpoſing, or deviſing, he ought to be equally ſo, at the time of *revocation*.—And as he ought to make his will by his own directions, and not by queſtions; ſo, in the ſame manner, it ought to be revoked. *Godolph.* 456.

act is *no* revocation, for the former reaſon: nor would it alter the caſe, if the teſtator, after making ſuch will, had covenanted with another to make a feoffment; for the covenant is but a more ſolemn declaration of his mind, but a bare declaration of a man's intentions to revoke a will, will *never* be allowed to countermand a ſolemn act; nor will a court of equity interpoſe in ſuch a caſe, unleſs the perſon lay under ſome diſability or impediment which prevented him from executing his intentions.

But if the teſtator, purſuant to ſuch covenant, *had made* a charter of feoffment, with a letter of attorney to make livery; but for want of the execution thereof nothing paſſes by the livery,——yet this *is* a revocation of the will; for here is a *preſent* intention of the teſtator declared by a ſolemn act, and it fails in ſome circumſtances. *1 Ro. Ab* 615, *Moor* 439. *Montague* v. *Jefferies*.

So if a man deviſes land to *J. S.* and afterwards bargains and ſells it to another; tho' this be *not* inrolled within ſix months according to the ſtatute, conſequently nothing can paſs to the bargainee, yet *this is a revocation of the will*; becauſe here is a ſolemn act done, which plainly ſhews the intention of the teſtator to countermand the will. *1 Ro. Ab.* 615

If a man deviſes land, and then makes a feoffment of it, and afterwards re-purchaſes it, yet *the will ſtands revoked by the feoffment*, and the re-purchaſe is no declaration of the teſtator's mind to ſet it on foot again. *Dyer* 143. *b.* *1 Ro. Ab.* 616

So if the feoffment had been to the uſe of himſelf in fee, *this* had been a revocation of

of the will, tho' the feoffment had only left him in his old eſtate; for this is ſtill in the nature of a new purchaſe, becauſe by the feoffment the whole eſtate was out of him, and the ſtatute of 27 *Hen.* 8. *c.* 10. returns to him the poſſeſſion, which is by *that* act to follow the uſe.

Moor 789. 1 *Ro. Abr.* 614, 617. 3 *Ch Ca.* 99.

A. makes his will in writing, and deviſes his land to *J. S.* and afterwards makes a feoffment *to the uſe* of his laſt will;—this was adjudged a countermand of his will; yet the countermanded will was allowed *ſufficient* to declare the uſes of the feoffment; for the feoffment being the ſubſequent and laſt conveyance, *muſt take place*, and ſo far revoked the will, that the land cannot paſs thereby; but the will ſtill continues good *to direct* the uſes of the feoffment, for the teſtator ſtill ſuppoſes it for *that* purpoſe in being, becauſe he refers to it for *that* end.

1 *Ro. Ab.* 614 2 *Show.* 90, 544.

If a man deviſes land to another, and after deviſes *it* to a corporation, tho' this *laſt* deviſe is void, (becauſe expreſsly forbid by the ſtat. 32 *Hen.* 8. as mortmain;) yet it is a revocation of the firſt deviſe; * for here is a plain declaration of the teſtator's intent, that the firſt deviſee ſhall not have the land, tho' this laſt diſpoſition cannot take effect.

Hard. 375, 376. *Seymour* v. *Northworthy.* 2 *Show.* 537.

—*A.* by will deviſed his lands to *J. S.* and afterwards made another will; but the jury found

* If there be ſeveral deviſes of *one* thing in the *ſame* will; the *laſt* deviſe ſhall take effect. *Co. Lit.* 112. *b.*

found he did not deviſe any lands thereby; this was *no* revocation of the former will as to the land deviſed; for ſince there is no land deviſed in the ſecond, it may be conſiſtent with the firſt will; and where the laſt act of the teſtator is not *contrary* to the former, and both may take effect, there can be no reaſon to conſtrue one to be a countermand to the other.

If a man deviſes three manors to *J. S.*— and afterwards ſays, the deviſee ſhall *not* have the manor of *D.* which is one of the manors; this is *no* revocation of the will as to the other two manors, it not appearing that the teſtator changed his will as to the other two manors, conſequently the will as to thoſe muſt ſtand good. *1 Ro. Ab. 617. Cro. Jac. 49.*

If the deviſe had been of the manor of *D.* to *J. S.* and his heirs, and after making ſuch will the teſtator had made a leaſe of that manor for years to another;—this had been *no* revocation of the inheritance, but of the land *only for the term;* for THERE CAN BE NO REVOCATION FURTHER THAN IT APPEARS THE TESTATOR HAD ALTERED HIS MIND; and making a leaſe to another, is no indication of his intention to alter his former diſpoſition but for the term, becauſe the diſpoſition by the will, and the creation of the leaſe being made to different perſons, may both take effect and ſtand together. *Cro. Car. 23. Hodgkinſon v. Wood. 1 Ch. Ca. 193 Barke. v. Took & al'. 1 Rol. Ab. 616 Cro. Jac. 49. Godolph. 455.*

So if a man deviſes lands to *J. S.* and his heirs, and afterwards by *another* will deviſes the *ſame* land to *another* for life, paying an annual *Cro. Eliz. 721 Coward v. Marſhall. 1 Ro. Ab. 616.*

annual rent to *J. S.* and his heirs; this is only a revocation *pro tanto*, for there muſt be an EXPRESS revocation IN WORDS, to countermand the will, *or the* SUBSEQUENT *act muſt be inconſiſtent with and* MANIFESTLY *contrary to the former will;* but in theſe caſes both are conſiſtent, for *J. S.* may have the inheritance, and the other deviſee an eſtate for life in the lands.

Cro. Jac. 49 *Coke* v. *Bullock.* *Godolph.* 455. But if the deviſe had been to *J. S.* in fee, —and *afterwards* the teſtator makes a leaſe for years to *J. S. to commence after his death*, and delivers the deed to a ſtranger, to the uſe of *J. S.* but the ſtranger did not deliver it to *J. S.* till *after* the death of the deviſor, and then *he never agreed to it, but claimed by the deviſe*;—yet this was a *ſufficient* revocation, becauſe *the deviſe in fee, and leaſe for years, being made to the ſame perſon, and to* COMMENCE AT THE SAME TIME, *cannot poſſibly ſubſiſt together*; for if the deviſe be ſtill good, the term cannot continue, but muſt merge in the inheritance, and *where both are inconſiſtent, the laſt act muſt neceſſarily countermand the former and take place*; yet even in this caſe, if the leaſe had been made to the deviſee to commence preſently, or at a day to commence in the *life* of the teſtator, it *might* have determined in his lifetime, and ſo be conſiſtent with the will.

4 *Co.* 60, 61. *Horſe* v. *Hemblings.* Qu. *How it would have been in caſe of a long term?*

If a feme ſole makes her will, and deviſes her land to *J. S.* and afterwards marries

ries him, and then dies, *J. S. takes nothing by the will, becauſe* THE MARRIAGE WAS A REVOCATION OF IT;——for as the law will not allow a woman under coverture to make a will, leſt ſhe ſhould be influenced by her huſband in the diſpoſition of her eſtate, ſo for the ſame reaſon WILLS MADE BY A FEME SOLE ARE COUNTERMANDED BY HER MARRIAGE, *leſt ſhe ſhould be influenced by her huſband after coverture to revoke, or let it ſtand, as beſt anſwered his intereſt*; and if he found it was his intereſt to keep it on foot, then it is preſumptive he would not ſuffer her to revoke it, which is contrary to the nature of wills, which are ambulatory till the death of the teſtator.

Now the ſtatute of frauds and perjuries has altered the law in many of the before-mentioned circumſtances; for as it appears, that after the 32 *Hen.* 8. deviſes of land in writing might have been countermanded by parol, which was a great encouragement to perjury and ſubornation of witneſſes; this ſtatute enacts, "that *no ſuch deviſe in "writing* ſhall be revocable, *otherwiſe than* "BY WRITING, or by burning, tearing or "cancelling the ſame *by the teſtator, or in "his preſence, and* BY HIS CONSENT." 29 *Car.* 2. *c.* 3.

A. deviſed his lands according to this ſtatute to *J. S.* and then publiſhed another will in the preſence of three witneſſes as his laſt will, revoking all former wills; this laſt will too gave the land to *J. S.* but the witneſſes ſubſcribed their names thereto in a room 2 *Show.* 89. *Idleſtone v. Speake.*

a room adjoining to that where the teſtator was, ſo that *he could not ſee them do it;* and *this laſt will was void* within the ſtatute, becauſe the witneſſes did not ſubſcribe their names *in preſence* of the teſtator, as the ſtatute directs; nor was it a good revocation in writing, becauſe there was nothing in it *inconſiſtent* with the firſt deviſe of the land to *J. S.* or that any ways contradicted the former intention of giving the land to *J. S.*

3 *Lev.* 108. *Diſter* v. *Diſter.* If a man deviſes his land in fee, and after making his will, by bargain and ſale makes a tenant to the *præcipe*, and ſuffers a common recovery to the uſe of himſelf in fee; *this* has been adjudged *a revocation* of the will, ſince the ſtatute of frauds and perjuries.

If a leaſe for twenty years be bequeathed to *J. S.* and after the teſtator makes a leaſe for fifteen years, this is *no* revocation; but if the teſtator after his will made, takes a new leaſe for a longer term, ſo as the former leaſe is ſurrendered in fact, or in law, this is a revocation, or at leaſt an adnulation, becauſe it is another leaſe, and not that which he had *at* the making of the will, *Wentw. Office of Exec.* 22.

If a man ſeiſed of land in fee, thereof infeoffs a ſtranger unto the intent to perform his will, and afterwards the feoffer makes his will, and deviſes the ſame lands to a ſtranger in fee;——in this caſe the feoffor may alter his will by a latter will, becauſe in this caſe the deviſee ſhall not have the land, but by force of the will, and that cannot

not take effect till after the death of the deviſor. The ſame law is of land, tenements, rent, common, *&c.* deviſeable by cuſtom uſed in ſome places; and alſo the ſame law is of other chattels real and perſonal deviſed, *mutatis mutandis*, *&c.* *MS. Notes.*

An eſtate in land was deviſed by will in writing, afterwards the teſtator made a verbal will to revoke it; this is *no* revocation, *Toth.* 286.

A will was duly made and ſigned by the teſtator, and a revocation was wrote on the ſame paper, but *not* ſigned by the teſtator, this is *not* a revocation within the ſtatute of frauds. 3 *Lev.* 86.

A revocation *muſt* be in writing, operating as a will, or by a writing by which the teſtator declares his intention, to revoke the firſt will. 3 *Salk.* 396.

A *ſubſequent* deviſe to a perſon *incapable* of taking, is a revocation of a *precedent* deviſe to a perſon *capable*. 10 *Mod.* 233.

The teſtator a little before his death ſent for his will, and in the preſence of ſeveral perſons cancelled it, and ſaid, "I cancel "my will," and deſired them to bear witneſs of it; and the next day told his phyſician he was hot in his body, but eaſy at his heart; this was looked upon as a ſufficient cancelling the other duplicate that he had not by him. *Comyns's Rep.* 453.

If one makes his will, and afterwards becomes lunatick, whether this lunacy is a revocation of a will made while *compos mentis*?

Charlton

Charlton J. doubted, but the reporter ſays, without doubt lunacy is *not* a revocation. *Vern.* 106.

After a deviſe in fee, the teſtator mortgaged the ſame for 200*l.* to be repaid at three years end, but within the three years he fell ſick, and declared he would not alter his will; *this* is a revocation. *Chan. Rep.* 153.

The ſtatute of frauds has not taken away revocations of laſt wills *by acts in law*, as if the teſtator ſhould afterwards make a feoffment contrary to the will, or any other act inconſiſtent with it; but *ſuch revocations remain as they were before the making of this ſtatute. Vide Carth.* 81.

Grant of reverſion without attornment is a revocation, tho' the land did not paſs by the grant for want of attornment. *Wentw. Office of Exec.* 22.

A mortgage was made after a voluntary ſettlement, with a power of revocation, and a will in confirmation of ſuch ſettlement; the mortgage is a revocation *pro tanto* only, *Vern.* 97.

J. S. deviſed his eſtate to four in truſt, and afterwards by a codicil revoked the part of his will, whereby he made two of the four truſtees, and named two others in their room; this is *no* revocation of the *other* diſpoſitions in his will. 2 *Mod. Ca. in Law and Eq.* 68.

Tenant in tail-male, remainder to himſelf in fee, deviſes his lands to *J. S.* and after

after ſuffers a recovery to the uſe of himſelf in fee, and dies without iſſue-male; this *is* a revocation of the will. 3 *Will. Rep.* 163.

J. S. ſeiſed of a leaſe for lives, deviſes it, and afterwards renews; *the renewal is a revocation of the will, Ibid.* 166.

A. deviſes his real and perſonal eſtate to truſtees, their heirs and executors, in truſt to pay 15*l.* *per ann.* to plaintiffs (his two ſiſters) for their lives, and after ſeveral legacies the ſurplus in truſt for the diſſenting miniſters at *Reading*, &c. and gives 300*l.* legacies to his truſtees.——Afterwards the teſtator, by two deeds of a *ſubſequent* date, conveys all his real eſtate, and makes a gift of his perſonal eſtate to the uſe of the ſame truſtees and their heirs, *&c.* proviſo both deeds to be void, on his tender of ten ſhillings to them. There was alſo a proviſo in the will, that if the ſiſters diſputed the will, they ſhould forfeit their annuities.—Teſtator after he had executed the deeds ſtill kept the ſame in his own cuſtody: the truſtees refuſe paying the ſiſters their annuities, who thereupon bring their bill, inſiſting that the deed had revoked the will, and that there was a reſulting truſt for them, as heirs at law; or at leaſt that they (the ſiſters) were intitled to their 15*l.* *per ann.* annuities.—The defendant inſiſted on the plaintiffs having forfeited their annuities;—decreed that the annuities ſhould be paid to the two ſiſters the plaintiffs, but the ſurplus to go to the diſſenting miniſters.——The deeds being

ing only intended *by way of truſt*, it was more reaſonable to eſtabliſh it on the foot of the will. 3 *Will.* 344.

A. and *B.* tenants in common in fee,—afterwards *A.* and *B.* made partition by deed and fine, declaring the uſe as to one moiety of the lands in ſeveralty to *A.* in fee, and the other to *B.* in fee. Ld. Chanc. *King* and the judges of *B. R.* held that the will of *A.* was *not revoked* by the deed and ſhare of the fine, but that his lands paſſed by the ſaid will. 3 *Will. Rep.* 169.

A. deviſes land and levies a fine, and the caption and deed of uſes are before the will, but the writ of covenant is returnable after the will; this *ſeems* a revocation, becauſe *a fine operates as ſuch* FROM THE RETURN OF THE WRIT OF COVENANT, and not from the caption. *Vide* 3 *Will. Rep.* 170. by way of note.

One makes duplicates of his will, and having one only in his cuſtody, cancels it with intention to deſtroy his will; *this is a good revocation* of the whole will. 1 *Will. Rep.* 346.

A man deviſes lands to his ſiſter in fee.—After this he makes a marriage-ſettlement, and limits the eſtate in ſtrict ſettlement, tho' here the remainder is limited to his own right heirs, yet the ſettlement *ſhall* be a revocation of the whole deviſe to his ſiſter. *Bernard.* 191.

One mortgages by deed and fine, this is only a revocation *pro tanto.* 2 *Will. Rep.* 334.

Lands

Lands deviſed to one in fee, and afterwards mortgaged to the ſame perſon, is a revocation; but if mortgaged to a ſtranger, it is only a revocation *pro tanto*, or *quoad* the mortgage. *Prec' in Chan'* 516.

A. hath two daughters *B.* and *C.*—and deviſes one moiety of his real and perſonal eſtate to *B.* and the other moiety to *C.*—and after in conſideration of marriage, covenants to ſettle a moiety of his *real* eſtate on the huſband of *B.* He ſhall have one moiety by the ſettlement, and the wife *the moiety of the* other *moiety* by the will. 2 *Will. Rep.* 332.

One deviſes to his wife ſix houſes, and the reſt of his real eſtate to his two daughters in fee, but afterwards, on the marriage of his eldeſt daughter, he covenants to ſettle one moiety on her and her huſband;——the deviſe of the *ſix* houſes *ſhall be good*, and ſubſiſt out of the remaining moiety. 2 *Will. Rep.* 333.

In caſe a fortune be given to a child by the father, *ſubſequent* to the making of his will, *wherein* he had bequeathed her a portion;——*this* ſhall be taken as a *revocation* of the legacy and will, FOR SO MUCH, *Preced in Chanc.* 183.

9*th. Of void deviſes.*

THE laſt thing to be treated of in this place is, *what the law rejects as void deviſes;* for the judges are very favourable in the conſtruction of wills; that if poſſible *the intention of the teſtator may prevail;* yet where the teſtator makes the ſame diſpoſition of his eſtate *as the law would have done*, had he been ſilent; or, where his diſpoſition is made in ſuch general terms, that his intention is altogether *doubtful* and *uncertain*, and cannot be collected from the words of the will; or laſtly, where the teſtator is eſtabliſhing a ſettlement *againſt* the reaſon and policy of common law; in theſe caſes the judges have thought *fit* to reject the will.

But the law will never conſtrue a deviſe void, unleſs it is ſo abſolutely dark, that the teſtator's meaning *cannot* be found out. *T. Atk.* 1 *V.* 412.

1 *Ro. Ab.* 626 *Hob.* 30. *Plow. Com.* 545. *b.* *Godb.* 461.

The *firſt* rule then to be obſerved is this, —That where the teſtator by his will made no other diſpoſition of his eſtate *than the law itſelf would have done*, were he ſilent; *there* ſuch a will is *uſeleſs*, and *ſhall* be rejected; therefore, if a deviſe be made to *J. S.* and his heirs, *who is heir at law* to the deviſor; *this is a* VOID *deviſe*, and the heir *ſhall* take by *deſcent* as his BETTER TITLE;——for the deſcent *ſtrengthens* his title, by *taking away the entry of ſuch as may poſſibly have right to*

the

the eſtate; whereas if he claims by deviſe, he is in BY PURCHASE.

Purchaſe in oppoſition to *deſcent* is taken largely;—if an eſtate comes to a man from his anceſtors *without* writing, that is a DESCENT: but where a perſon takes any thing from an anceſtor, or others,—*by deed*,—*will*, or *gift*, (for, *a gift is* IN LAW *a purchaſe*) and *not* AS HEIR AT LAW;—*that* is PURCHASE. 2 *Lil. Abr.* 403.

When an eſtate doth *originally veſt* in the heir, and *never was*, nor could be in the anceſtor;—ſuch heir *ſhall* take by way of *purchaſe*: but when the thing *might* have veſted in his anceſtor, *tho' it be* FIRST *in the heir*, and *not* in *him* at all;—the heir *ſhall* have it in nature of deſcent. 1 *Rep.* 95, 106.

An heir takes an eſtate *by will*, in ANOTHER MANNER than the common law would have given it; THERE he takes *by purchaſe*, and *not* by deſcent;—but, then he MUST be the RIGHT heir. 2 *Lev.* 79.

So if a man deviſes land to his wife for life, remainder to *J. S.* who is heir at law in fee, this is no good deviſe to *J. S.* becauſe after the determination of the particular eſtate, *the reverſion would have gone, without further diſpoſition, in the ſame manner* TO THE HEIR AT LAW, as is now limited by the will. 2 *Leon.* 101. *Baſpool's* caſe. 1 *Ro. Ab.* 626. *Preſton* v. *Holmes.* *Hob.* 30.

A. ſeiſed of lands *on the part of his mother*, deviſes them to his executors for ſixteen years for payment of his debts, and *afterwards deviſes them to his heir* AT LAW *ex parte materna*; 3 *Lev.* 127, 406. *Hedger* v. *Row.* *Salk.* 241, 242. *Style* 148.

materna; this is a void deviſe to the heir at law; for tho' it was argued to ſupport the deviſe, that if it is obtained, the heir of the part of the father might in the end inherit, which he could never do, if the deviſe be rejected; yet they adjudged the deviſe to be VOID, becauſe *there is no alteration made in the* TENURE *of the eſtate, nor is the* QUALITY *of the eſtate any way altered*; but whether the deviſee takes either by deſcent or by the will, it is a fee-ſimple, and it were but an *actum agere* to make him take by the will.

Hob. 29. 30. *Cowdon* v. *Clark.* *Moor* 860. *Godb.* 461. 1 *Ro. Ab.* 610.

But where *another* eſtate is created by the will, *than* would deſcend to the heir at law, —or, where the *quality* of the eſtate is *altered* by the deviſe; THREE *the diſpoſition of the will* SHALL *prevail*, tho' it be made to the heir at law.

Thus where a man, having iſſue a ſon and daughter, deviſed that his lands ſhould deſcend to his ſon, and *if he died without iſſue of his body*, then the land to go over, *&c.*—the ſon by this will took an *eſtate-tail*, tho' heir at law to the deviſor, becauſe *here is an eſtate-tail created by the will*; whereas a fee-ſimple would have deſcended, and the heir *muſt* claim under the will, or, the remainder would be void.

3 *Lev.* 127, 128.

So where a man has iſſue *only* two daughters, and deviſes his land *to them and their heirs*, this is a deviſe to the heir at law, and yet good, becauſe *the deviſe makes them* JOINTENANTS, in which the ſurvivorſhip takes place; whereas had they taken by deſcent, they

they had been co-partners; therefore the will *altering* the QUALITY of the eſtate, ought to prevail.

A. deviſes his land to *B.* for life, remainder to *C.* in tail, the remainder to the *next heir-male of the deviſor and the heirs-male of his body*,—*B.* and *C.* died without iſſue;—the next heir of the deviſor was a daughter,—ſhe was adjudged to have the land *by way of reverſion and deſcent*; and tho' ſhe have a ſon afterwards, he ſhall not take the land from her. *Hob.* 33. *Perk.* 506.

Secondly, Deviſes are void and rejected, where the *words* of the will are ſo *general* and *uncertain*, that the teſtator's meaning *cannot be collected* from them;—therefore where a man by will gave *all* to his mother, the general words did carry *no lands* to his mother;—for ſince the heir at law has a plain and uncontroverted title, unleſs the anceſtor diſinherits him, it were ſevere and unreaſonable to ſet him aſide, *unleſs ſuch intention of the teſtator is evident from the will*; for that were to ſet up and prefer a dark, and at beſt but a doubtful title, to a clear and certain one. 1 *Lev.* 130. *Bowman* v. *Milbank.* *Raym.* 97.

So where there are *two* or more deviſees in the will, and the words are ſo general and uncertain, that *one may come under deſcription as well as the other*; there the deviſe ſhall be rejected as too uncertain and void; and on this the caſe of *Wood* and *Ingerſole* ſeems chiefly to turn;—for there a man having lands in *three ſeveral* counties, deviſes the lands of *a* county to each of his 1 *Bulſtr.* 61, 62, 63. *Pollexf.* 481, 482.

ſons, and if one of his ſons ſhould die, that then the one of them ſhould be heir unto the others;—the eldeſt ſon firſt died;—the court adjudged his part to *his* ſon, becauſe it did not appear from the words of the will, which of the two ſurvivors ſhould be his heir; therefore for the uncertainty, the words were rejected.

Cro. Eliz. 742 *Taylor* v. *Sayer* 1 *Ventr.* 229. *A.* having iſſue two ſons and two daughters, deviſed his land to his wife for life, and after her death *to his iſſue;*——this was held a void deviſe, becauſe *it was uncertain* WHAT *iſſue he meant*, whether one of his ſons, or one of his daughters; and all his children could not take becauſe the deviſe was to the iſſue in the *ſingular* number.

5 *Co.* 68. *b.* If a man has iſſue two ſons, and deviſes his land to *his ſon*,—*without ſignifying* WHICH *he means*,—this too is void for the uncertainty; for to conſtrue it a deviſe to the eldeſt, is to make it an impertinent deviſe, that being no more than *actum agere*; and to conſtrue it a deviſe to the younger ſon, ſeems ſtill more unreaſonable, becauſe that is to diſinherit the heir at law, without any apparent intention of the teſtator to warrant it, and to ſet up a doubtful title in deſtruction of a clear one.

5 *Co.* 68. *b.* *Hob.* 32. So if a man has iſſue two ſons named *John*, and deviſes his land to *his* ſon *John*,—this is a void deviſe for the uncertainty, unleſs one of them can prove that the teſtator mentioned *John* his younger ſon, or that the teſtator believed that his eldeſt ſon *John* being beyond ſea was dead; for theſe circumſtances

circumſtances clear up the *intention* of the teſtator; therefore ſuch averment was admitted, becauſe it is conſiſtent with the will, and *the conſtruction and judgment thereon muſt ſtill be genuine, becauſe* TAKEN FROM THE WORDS OF THE WILL.

A man had iſſue a ſon and a daughter, the daughter was married, and had iſſue *two* daughters,—the father deviſed that all his lands ſhould deſcend to his ſon, provided that if his ſon died without iſſue of his body, *then the land to go to the right heirs of* HIS NAME AND POSTERITY *for ever*;—the ſon died without iſſue, and upon ejectment between the brother of the deviſor and the daughters, this was adjudged a void deviſe, becauſe *neither could claim under the* DESCRIPTION *of the will*; not the brother, becauſe tho' he was of his name, yet he was *not* his heir; and tho' the daughters were his heirs, yet they were *not of his name*, ſo not within the words of the will, conſequently the limitation is void for uncertainty.

A. ſold land to *B.*—but before conveyance executed, *B.* ſold the ſame land to *C.* and then *A.* conveyed to *C.*—and *C.* being thus ſeiſed, deviſed the land to his younger ſon in theſe words, "*I bequeath to R. my "ſon, all the land which I have purchaſed of "B.*"—whereas in ſtrictneſs of law he purchaſed from *A.* who conveyed to him; yet *this was allowed to be a* SUFFICIENT DESCRIPTION *of the land*, conſequently a good deviſe of it, becauſe the purchaſe was *really* made from *B.* the money being paid to him. 2 *Leon.* 120, *Thorpe* v. *Thompſon.*

A. ſeiſed

1 *Rol. Ab.* 611 *A.* ſeiſed of land in fee, deviſes that *B.* and his heirs ſhall ſtand ſeiſed of it *to the uſe of J. S.* and his heirs; tho' *B.* be *not* ſeiſed of the lands, but a perfect ſtranger to it; yet this amounts to *a good deviſe* to *J. S.* becauſe it plainly appears, that the intention of the deviſor was that *J. S. ſhould have the uſe of the land;* and *the poſſeſſion* MUST NECESSARILY FOLLOW IT.

1 *Ro. Ab.* 609. If a man deviſes to twenty of the *pooreſt* of his kindred, this is void for the uncertainty whom the court will adjudge the pooreſt.

Thirdly, Deviſes, as well as other ſettlements, *which tend to introduce* PERPETUITY, * *are*

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* *Perpetuity*, as it is a legal term of art, is the limiting an eſtate either of inheritance, or for years, *ſo as to render it* UNALIENABLE *longer than for a life or lives* IN BEING AT THE SAME TIME, and ſome ſhort or reaſonable time after. 2 *Wms. Rep.* 688. It is a thing ODIOUS IN LAW and deſtructive to the common-wealth:——it would put a ſtop to the commerce, and prevent the circulation of the property of the kingdom. *Vern.* 164.

Perpetuities are,

abſolute

or

qualified.

Eſtates-tail, from the time of the ſtatute *de donis*, till common recoveries were found out, were looked on *as perpetuities.* 12 *Mod.* 282.——And every *executory* deviſe is *a perpetuity* as far as it goes, *i. e.* an eſtate unalienable, tho' all mankind join in the conveyance. 1 *Salk.* 229.——A perpetuity is, where if all who have intereſt join,

are void; for wills, tho' favourably expounded, *are yet to be conſtrued according to the* COMMON RULES *of the courts of law and equity:* hence therefore it is, that a deviſe to *J. S.* and his heirs, the *remainder to* J. D. *and his heirs*—is void; becauſe THE LAW IN NO CASE WILL ALLOW A LIMITATION OF A FEE-SIMPLE UPON A FEE-SIMPLE; for by a deviſe to *J. S.* and his heirs, *the deviſor hath transferred the whole eſtate to him*, and then the limitation over muſt be impertinent and void, when the deviſor had before given the whole eſtate;——nor can his deviſe be good by way of future intereſt or a remainder to veſt on a contingency, becauſe *no man can ſay when the heirs of* J. S. *will fail;* and to allow the remainder to *J. D.* to be good on ſuch a diſtant contingency, is to perpetuate the eſtate in the family of *J. S.* to preſerve a remainder or intereſt in *J. D.* which probably may never veſt.

But tho' the law will not allow a preſent remainder to be limited on a fee, yet a future contingent eſtate may be limited upon a fee, where the contingency upon which it is to veſt, *is to happen* IN A SHORT TIME; 3 *Chan. Caſ.* 35. *Cro. Jac.* 590 *Cro. Eliz.* 205

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join, yet they cannot bar or paſs the eſtate;—but if by concurrence of all having intereſt the eſtate tail may be barred, it is *no* perpetuity. *Ch. Ca.* 213.—It is abſolutely againſt the conſtant courſe of Chancery to decree a *perpetuity*, or to give any relief in that caſe. 1 *Chan. Rep.* 144.—An attempt to make a PERPETUAL SUCCESSION of eſtates *for life* is vain and not practicable. 2 *Vern.* 738.

therefore

therefore if a deviſe be made to *J. S.* and his heirs, and *if he die without iſſue*, LIVING *J. D.* then to *J. D.* and his heirs; there nothing veſts *immediately* in *J. D.* becauſe the whole eſtate is transferred to *J. S.*—yet the limitation is good by way of *executory* intereſt or deviſe; becauſe it is to veſt on a contingency which is to happen on a life *in being*, therefore out of the inconvenience or danger of a perpetuity, becauſe *J. S.* is only tied up from alienating but for life, and his heirs are at liberty to diſpoſe of it *after the death of* J. D.

3 *Leon.* 64. And to this purpoſe is the caſe of *Hind* and *Lyon*, where a man deviſed his whole manor to his wife *until his ſon and heir came to the age of twenty-four years*, and at that age gave his wife one part, and his ſon the reſidue; and if his ſon die before the age of twenty-four without heir of his body, that *then* the land ſhould remain to *J. S.*—this was held a good future contingent remainder to *J. S. on the fee-ſimple which deſcended to the ſon;* for the lands were aſſets in his hands as coming by deſcent from the anceſtor, becauſe the contingency on which it was to veſt was to happen in a few years, and be out of the danger of a perpetuity.

1 *Ro. Ab.* 610 Now as to the diſpoſition of chattels by will, we muſt diſtinguiſh between *perſonal* chattels and *real;* * for if I deviſe a *perſonal* chattel

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* What is called an *eſtate* in lands, is termed—PROPERTY, in perſonal chattels; hence it was held, that a grantor's

chattel to J. S. the remainder of it to another, J. S. *has the whole property*, and may diſpoſe of it as he pleaſes;——for ſuch chattels will bear no limitation over, becauſe being commonly moveable things, they are ſubject to be broken, worn out, or loſt in the compaſs of a life; therefore it were ridiculous to ſuffer ſuch a limitation which the nature of the thing will not bear;—— *aliter* of an uſe:——It was indeed formerly held, that ſuch limitations of remainders of terms were void, which (before the time of *Hen.* 8.) was not ſo unreaſonable a reſolution, as it may ſeem at preſent; for tho' terms for years could never be broken or loſt, as perſonal chattels may be; yet before the 21ſt of *Hen.* 8. while they were under the power of the freeholder, *they were very ſhort*, becauſe *it was not worth while to prolong them*, while they were precarious and *ſubject to the will of the reverſioner*; therefore according to the nature of things in thoſe times, in the notion of the common law, it might have been reaſonable enough that a limitation of a term for years to a man for his life, was *an entire diſpoſition of it*, becauſe being formerly of a very ſhort continuance, they generally were out and deter-

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grantor's deviſe of a *perſonal* thing to one, tho' but for an hour, or a minute, was A GIFT FOR EVER; and, *an* ABSOLUTE DISPOSITION *of the* ENTIRE PROPERTY. *Bro. Deviſe* 13. *Plow.* 521. *Dy.* 74. 8 *Co.* 94.

mined

mined in a life, and *then* there could be no room for a limitation over.

But this doctrine did not long prevail, for after the ſtatute of 21 *Hen.* 8. terms for years began to ſwell *beyond* the compaſs of a life; then the Chancery, (as already obſerved,) interpoſed, *to rectify the rigor of the common law*, and have ſettled ſuch remainders of terms to be *good*, where the ſettlement does *not* tend to introduce *perpetuity*.

3 *Chan. Caſ.* 34. Therefore if a term be deviſed to *A.* and the heirs-male of his body, provided if *A.* dies without iſſue *in the life of B.* then the term to go to another;——this laſt limitation is good, becauſe there is *no danger* of a perpetuity, for the *contingency* on which it is to veſt is to happen within a life *in being*.

1 *Ro. Ab.* 611 3 *Cha. Caſes* 36. 1 *Jones* 15. But if the limitation had been to *A. in tail*, the remainder over to another;—here the *laſt* limitation had been void, becauſe the whole property of the term *being in A.* the limitation over, which is to veſt on the contingency of A.'s dying without iſſue, *is too diſtant to expect*;——whereas in the former caſe, the limitation after the intail to *A.* is good, *by way of future intereſt, or executory deviſe*, becauſe it is to veſt in the compaſs of a life, or not at all; and it does not look like a perpetuity, to oblige *A.* from alienating, becauſe *the eſtate will be free from the clog*, WHEN THE LIFE IS SPENT,——and whoever is proprietor afterwards, may diſpoſe of it at pleaſure.

A term

A term of ſeventy-ſix years was deviſed to *A.* for life,—then to *B.* and his aſſignees *all the reſt* of the term; provided if *B.* dies without iſſue then living, *then* to *C.*—this limitation *to C.* has been held *void*, tho' it may be *juſtly doubted* how far it is an authority, ſince the caſe of the duke of *Norfolk*; —for there was no danger of a perpetuity, the limitation to *C.* being *to veſt if B. died without iſſue then living*, which ſurely could not be too diſtant to expect, when the contingency muſt *neceſſarily* happen, or not at all, on the determination of *his* life.

1 *Jones* 15. *Child* v. *Bayly* *Cro. Jac.* 459 1 *Ro. Ab.* 412, 413. 3 *Cha. Caſes* 36, 50.

If there be two jointenants of lands, and one deviſeth that which to him belongs, and dieth,——this is *no good* deviſe, and *the deviſee takes nothing*, becauſe the deviſe does not take effect until after the death of the deviſor, and *then the ſurviving jointenant takes the whole by prior title, viz.* From the firſt feoffment;——but in this caſe, if the deviſor ſurvives the *other* jointenant, *the deviſe is good for the whole*, becauſe *he* being the ſurviving jointenant, *has the whole by ſurvivorſhip*, and *then* the words of the will are ſufficient to carry the whole eſtate beſides; tho' at the time of making his will he was not ſole tenant of the land, yet he was ſeiſed *per my & per tout*; * therefore *it is impoſſible*

Vide title Executory Deviſe. *Litt. ſect.* 287. *Perk ſect.* 500.

* Jointenants are ſaid to be ſeiſed *per my et per tout*,— by the *half* or *moiety*, and by *all*; that is, they each of them have the entire poſſeſſion, as well of every parcel as

ſible to fix on any particular part which he meant to deviſe, becauſe he could not then call one part of the land more his own than another; therefore the moſt *genuine* conſtruction ſeems *to give the whole*, ſince he was ſeiſed *per tout* of it, *at the time* of the deviſe.

1 *Lev.* 59. If a man deviſes to "the heir of *J. S.* and "his heirs," *J. S.* being alive,—his *heirs* ſhall take nothing by the deviſe, becauſe during the life of *J. S.* he can have no heir, *quia non eſt hæres viventis*, and the deviſe being immediate to the heir, if he cannot take it at the death of the teſtator, he ſhall *never* take.

1 *Lev.* 59. So, if the deviſe had been *to the heir of an alien*, it had been void; becauſe an alien, according to the policy of our law, can have

5 *Rep.* 502. *no* heir, either to inherit, or to take by purchaſe. *

If

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as of the whole. *Litt. ſ.* 288. 5 *Rep.* 10. They have not, one of them a ſeiſin of one half or moiety, and the other of the other moiety; neither can one be excluſively ſeiſed of one acre, and his companion of another; but *each* has an UNDIVIDED MOIETY of the *whole*, and not the whole of an undivided moiety. *Bracton*, ſays, *Quilibet totum tenet et nihil tenet; ſcilicet, totum in communi, et nihil ſeparrtim per ſe.* l. 5. tr. 5. c. 26.

* As an alien cannot inherit himſelf, ſo he cannot be inherited;——the grandfather born in *England*,—the ſon *an alien*,—the grandſon born in *England*;—the grandſon ſhall *not* inherit the grandfather, becauſe *he* muſt *then* repreſent the father, *who cannot be repreſented*;—but if the

If a man deviſe land to *A.* for life, the remainder to *B.* in fee,—and *A.* dies in the life of the teſtator, yet the remainder to *B.* *is good:* for tho' *in conveyances at law there can be no remainder without a particular eſtate to ſupport it,*—yet here the intention of the teſtator being clear, that *B.* ſhould take *after* the death of *A.* ſhall prevail, and *B.* may enter *immediately* after the death of the teſtator. *Perk. ſect.* 568. *Dyer* 122. *a.* *Co. Lit.* 25. 1 *Rol. Abr.* 837. 2 *Show.* 136.

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the father be an alien, and two brothers born in *England*, they *may* inherit each other, becauſe *the deſcent* is IMMEDIATE, and they *do* NOT take by repreſentation of the father. 1 *Sid.* 193, 198. 1 *Vent.* 413. *to* 419. *Hard.* 224. *Co. Lit.* 8. *cont.*

If the *eldeſt* ſon be an alien, the younger brother *born in England*——SHALL INHERIT THE FATHER:—— otherwiſe it were if the eldeſt ſon were *attainted*, becauſe the eldeſt ſon and all his deſcendants are *before* the younger brother, and the younger brother can*not* inherit before *that line* is extinct; and it is a foreign preſumption, to ſuppoſe that any of *that line* ſhould come over and have children in *England*;—but, the perſon *attainted* is ſuppoſed to have *all* his children reſiding in the kingdom under the king's allegiance:—therefore there is a line *continuing* before that of the younger brother. 1 *Vent.* 417. 1 *Inſt.* 8. *a.* 1 *Sid.* 195.

For the ſame reaſon, if an *alien* hath *four* ſons, the two eldeſt aliens, and the two younger naturalized; and one of the younger ſons purchaſe lands and dies, *the eldeſt brother having iſſue* BORN WITHIN THE REALM;—the younger brother, and *not* the iſſue of the eldeſt, *ſhall inherit.* Hard. 224.

If an alien hath a ſon an alien, and afterwards is made a denizen, and hath a *ſecond* ſon;—*the ſecond ſon ſhall inherit*, tho' the eldeſt ſon be alive. *Cro. Jac.* 539. vide 1 *Inſt.* 8, &c. very full on this ſubject.

Bunker

Bunker v. *Cook in B. R.* *

EJECTMENT for lands in *Kent*, on the demiſe of *Bockenham*; on Not guilty pleaded there is a ſpecial verdict, wherein the jury find, that *William Bockenham*, Eſq; being commander of her majeſty's ſhip the *Grafton*, on the third of *May* 1692, made his laſt will and teſtament in writing, and they find it *in hæc verba*; he recites that he was *then* bound to ſea, and then goes on and ſays, "*I do hereby give and bequeath unto my* "*well beloved wife* Frances Bockenham [the "leſſor of the plaintiff] *all ſuch ſum and* "*ſums of money, which now is or ſhall become* "*due from his majeſty, for my own and ſer-* "*vants wages, and all ſuch ſums of money,* "lands, tenements, *goods, chattels, and eſ-* "*tate whatſoever, wherewith* at the time of "my deceaſe I ſhall be poſſeſſed of or in- "veſted with, or which ſhall belong to me, "*and I do appoint her my whole and ſole exe-* "*cutrix of this my laſt will.*"

They find that the teſtator, *at the time of this will*, was *not* ſeiſed of any land in the county of *Kent*, but *afterwards* by deeds of leaſe and releaſe, dated the twentieth and twenty-firſt of *March* in the year of our

* In 1 *Salk*, 237. this caſe is intituled *Burter* verſus *Coke*. *Mich.* 6 *Ann. B. R.*

lord

lord 1700, Sir *George Wheeler* and others being ſeiſed in fee of the lands in the declaration named, *conveyed the ſame* to the teſtator and his heirs, by virtue whereof he became ſeiſed.

They find the lands are held *in ſocage*, and are in the nature of gavelkind, and deviſable by the cuſtom of *Kent*; and ſometime afterwards the ſaid *William Bockenham* dies, then the deviſee enters, and *the heir at law enters upon her*; and ſo the queſtion between them is, whether theſe lands *do paſs*, and are diſpoſed of by captain *William Bockenham* or not.

Chief Juſtice Holt, *giving the opinion of the court*;

We have conſidered the caſe, and are all of opinion that *the will*, AS TO THESE LANDS, *is a void will*, and that the lands do *not* paſs thereby, but that judgment ought to be for the defendant, *the heir at law*.

We agree that the words of the will are full and comprehenſive, to paſs all theſe lands, *had he been ſeiſed of them at the time of making this will*; and we hold they cannot by law paſs *on this account* ONLY, becauſe the teſtator was *not* ſeiſed of theſe lands in the year 1692, at the time of making the will, tho' perhaps it might be his intention and deſign to have them paſs.

The caſe is no more than this; a man makes his will, and deviſes *all* the lands he *ſhall have* at the time of his death; and *after that* he purchaſes lands, and dies *without republication*;

publication; we hold that *it is a void deviſe*, for a man cannot deviſe any lands but *what he has* AT THE TIME OF MAKING HIS WILL.

There is no act between the making of the will, and the death of the teſtator, neceſſary to be done to make this a perfect and complete will, no writing, no publication, no other act whatſoever; it is ſubject to a revocation indeed, during the teſtator's life, and is to take effect only from the time of his death; but it is a will, *a diſpoſition of the eſtate bequeathed* FROM THE TIME OF MAKING THEREOF.

Wherever there is a diſability in the teſtator *at* the time of making the will, tho' that diſability be actually removed *before* his death; yet the will will be void, becauſe *he had no ability* AT THAT TIME.

Suppoſe an infant makes a will, and deviſes land, *during his infancy*; or a feme covert in the life of her huſband makes a will, and diſpoſes of land thereby; tho' the coverture or infancy be afterwards removed, and the huſband die, or the infant come of age, yet if either of the deviſors die *without new making* or *publication of their* will, this is a *void* will, becauſe of their *original diſability*, tho' they ſhould live many years after ſuch diſability removed;—removing theſe diſabilities will not do, without a new publication, or making a new will.

Now theſe are perſonal diſabilities, but *this* is a *real* one;—*he had* NOTHING *to diſpoſe of*, ſo here is a removal of a real diſability;

and

and ſhall the removal of *that* be more effectual for making it a good will, than removal of a perſonal diſability;—No ſurely.

It is ſaid in *Forſe* and *Hembling*'s caſe in 4 *Co.* that the *making* of the will is *not* the will, but *only the commencement* of it;—— the meaning of that is only, that it doth *not transfer* the intereſt and property of the thing deviſed; but *ſtill it is his diſpoſition until he revokes it*;—now what commencement has *this* will as to *theſe* lands? It cannot have a commencement from the time of making the will, becauſe *the teſtator had not the eſtate at* THAT TIME;—when then would you have this to be a will?—Muſt you ſtay until he has purchaſed to make this a will?

Now *this* act of *purchaſing* theſe lands, and *this* act of *diſpoſing* of them, are two different things, and are of different natures;—you muſt ſuppoſe that *eo inſtanti* that he purchaſes he makes his will, which is abſurd and repugnant.

The law of *England* is *plain* as to this point by all precedents, and the law is the ſame of lands deviſed by cuſtom, as well as by ſtatute. There is no will that I can find in any *entry*, but it is ſaid that *the teſtator* IS SEISED *in fee*, and that being *ſo ſeiſed* he made his will, and did diſpoſe, deviſe and bequeath, *&c.* which plainly ſhews that it was *abſolutely* neceſſary that *he ſhould be ſeiſed in fee* AT THE TIME HE MAKES HIS WILL; and of theſe there are many authorities; I ſhall name a few only, *Co. Entr.* 602, 664. and in *Raſtal* 274. there is a precedent of a

will of lands deviſeably by cuſtom, that the teſtator was *ſeiſed* in his demeſne *as of fee.* 24 *Hen.* 6. 6. *a.*

Tho' the terms of pleading do *not* make the law, *yet conſtant pleading of a thing in ſuch a manner, is great evidence of the law;* and this argues the neceſſity of the teſtator's being ſeiſed in fee *at* the time of making the will: but it is objected, that lands deviſeable *by cuſtom* differ from lands at *common law*, becauſe they are deviſeable as *goods and chattels*, and appeal to the cuſtom ſet forth in the writ *Ex gravi querela*, in *Fitzherbert's Natura Brevium* 199. *b.* Now it is ſaid that by this cuſtom, it is lawful to deviſe lands and tenements *as chattels*, tho' the teſtator has *not* the poſſeſſion of them *at the time* of making the will; and that a man may diſpoſe of his chattels and perſonal eſtate, which he ſhall for the future acquire, *any time after* making his will, to the time of his death, and therefore ſhall diſpoſe of cuſtomary lands in the ſame manner.

New Nat. Brev. 459.

In anſwer to this, I deſire the cuſtom, in that writ ſet out, may be well conſidered; and it will plainly appear, that the cuſtom is *not general*, that a man ſo qualified may deviſe *terras & tenementa* as he may goods and chattels, but it is *tenementa* SUA;—they muſt be *ſua* before he can diſpoſe of them, they muſt be *his* property *before* he can deviſe them:—Now if they are not *ſua* at the time of the deviſe, *then* he is out of the cuſtom, and the will cannot be affected by it.

It is true, *perſonal* eſtates and chattels *may by the common law be diſpoſed of*, BEFORE *he has* PURCHASED *or had the* POSSESSION *of them;* and there are many caſes that make out this; but, there is a great difference between a *real* and *perſonal* eſtate, for perſonal eſtate and chattels are tranſient and fleeting, and not fixed and permanent as lands are.

Perhaps the greateſt part of a man's eſtate is in goods *to-day;* he may have a mind to turn them into money to-morrow;—this the neceſſity of traffic in the world abſolutely requires. Would it not be hard that a man ſhould be obliged to make a will every day, which he muſt, if he could not diſpoſe of his chattels, becauſe they have undergone ſome alteration? This would be a great perplexity: but on the other hand, *land continues the ſame to the end of the world*;—and as to real eſtates, there is time and opportunity to make ſettlements as he thinks fit; but, as to perſonal eſtate, *that* is under conſtant variation, it is quite otherwiſe in reaſon.

Suppoſe the caſe was of a deviſe of a *real chattel*, and a man ſhould deviſe a term for years that he *had not at the time of the deviſe*, but had purchaſed ſome time before his death: I *doubt* whether it would be good. Suppoſe for the purpoſe, one takes a *college* leaſe, *ſubſequent* to making his will; the queſtion is, whether *this* would be a good deviſe; I am inclined to think *not*. The caſe of *Aſhby* and *Lever* (*Goldeſborough* 93.) comes up to this matter;—a man makes his

will, *having* a college leaſe, or other leaſe, and deviſes *this* leaſe to *J. S. after making which will,* HE SURRENDERS *this leaſe, and* RENEWS *the leaſe* with the dean and chapter; then dies,—this queſtion was, whether the *deviſee* ſhould have this leaſe; and it was held that *renewing the leaſe was a revocation of the will, and that the leaſe did not paſs.* This ſeems to be a very ſtrong caſe as to *this* point, and the reaſon is plain, becauſe *the eſtate was* NOT IN HIM AT THE TIME OF MAKING THE WILL.

March 137. The queſtion was *there,*—"whether a term *not* aſſented to by an executor, and *which paſſed* ONLY AS AN EXECUTORY DEVISE, could paſs *by the will* of the deviſee;"—there it was held, that it was only a poſſibility, and that *nothing paſſes by the will;*—and indeed how could he diſpoſe of a term that was *not his* but another man's? It is hard to imagine ſuch a prepoſterous thing; but I ſhall not give any poſitive opinion herein, this not being our caſe; *the executor* MUST ASSENT *to a legacy, elſe nothing paſſes;* for *nothing can paſs immediately* WHERE A TERM IS DEVISED;—but this enough to ſhew the difference between a real and perſonal eſtate;—one is permanent and laſting, the other mutable and fleeting.

To make a will to take effect *from* the purchaſe of an eſtate, is *repugnant* to the nature of a purchaſe, for a will gives it to another and his heirs; the purchaſe gives it to himſelf and his heirs;——the will gives it to his wife, and the purchaſe gives it to himſelf

himſelf in fee, ſo that HERE *is a* PERFECT CONTRADICTION.

Now it is to be noted, *here* is no republication; if there had, *that* would have done, and made theſe lands paſs; provided that all the circumſtances *neceſſary* to the making of an original will within the ſtatute of frauds and perjuries, had been obſerved.

Suppoſe a man deviſes *all* his lands in tail, and *afterwards purchaſes* OTHER *lands*, and dies before re-publication,—thoſe purchaſed lands will *not* paſs; but if he republiſh the will, in ſuch a manner and with ſuch circumſtances, as are neceſſary to the complete execution of an original will, the purchaſed lands *will paſs*, as by an original will.

It is ſaid indeed (in *Bret* and *Rigden*'s caſe,) that where a man deviſes lands in certain, as the manor of *D.* or *White-acre*, and the deviſor *has nothing* in the land at the making the deviſe, but does afterwards purchaſe the ſame; the new purchaſed lands ſhould paſs to the deviſee, becauſe *his intent was manifeſt*. If that were law, it is full againſt me; but I think—*that caſe is not law*; it is only a ſaying of ſerjeant *Lovelace*; and the caſe quoted in the margin does not warrant any ſuch thing. I thought indeed, before I looked narrowly into the caſe, which is the 39 *Hen.* 6. 18, that it had been ſo; but there is nothing in *that* book to warrant it, nor is there any thing like it in either of the abridgments, either in *Fitzherbert*, title *Deviſe* 17, or in *Brook*, the ſame title 15.

It

It is only a note of two judges opinion.—"*Nota*, ſays the Book, in the *King's Bench*, "*per Yelverton* and *Markham*." If a man deviſes land, and is diſſeiſed *after that*, and then dies; *this deviſe is void and cannot be made good;* and the reaſon is, becauſe *the diſſeiſin turns* IT *to a* RIGHT, and *it is only a choſe in action, and* CANNOT BE DEVISED AWAY; therefore, ſays the book, it was held a good plea againſt the deviſe, that *the deviſor did* NOT DIE SEISED *of thoſe lands;*—but the book goes on further, and ſays,—ſuppoſe a man is diſſeiſed, and *then* makes his will, and deviſes the lands, and *afterwards re-enters* into the lands;—it is made a queſtion there, if it be a good plea to ſay, that *the deviſor* HAD NOTHING *in the lands at the time of the deviſe;* this is the caſe put, and the caſe *meant*, upon which the preceding opinion is grounded, and it ſeems by *that* book, that *if he do re-enter, the land ſhall paſs;*—and I am of opinion they will paſs if he do re-enter; and the reaſon is,—if a man is diſſeiſed, and he makes a re-entry, *ſuch re-entry purges the diſſeiſin*, and by relation to all intents and purpoſes, *he is in poſſeſſion from the beginning*, and for *that* reaſon he ſhall have an action for the mean profits, between the time of the diſſeiſin and bringing the action; and ſo is 38 *Hen.* 6. 27. 19 *Hen.* 6. 17.—He may in ſuch caſe be juſtly ſaid to be *ſeiſed in fee* of ſuch lands, and therefore may diſpoſe and deviſe the ſame away; becauſe *the entry reveſts the eſtate*, and he is now, in conſideration of the law, *in poſſeſſion from the time*

time of the diſſeiſin, therefore is intitled to the meſne profits, as tho' he had been *actually* in the poſſeſſion all the while;—but that is not this caſe, here the deviſor has neither *jus in re* nor *jus ad rem*, for the land is *here* purchaſed *eight years after* making the will.

Suppoſe an heir, who has nothing but a *bare expectation*, during his father's life, ſhould make a will, and deviſe all the lands *he ſhould have* at the time of *his* death,—— would the lands which came to him by deſcent from his father paſs by the deviſe? *No ſurely.*—But then ſuppoſe a man makes a will of land *in reverſion*, expectant on an eſtate-tail, or an eſtate for life, and *before* his death, tenant in tail, or tenant for life, dies without iſſue,—theſe lands *will* paſs, tho' he had but a reverſion only at the time of making the will, becauſe *he is ſeiſed at that time as much as he can be*, and it is a *certain preſent intereſt*, tho' to commence *in futuro*, and all the eſtate he could give, he intended him.

There was a caſe in lord *Bridgman's* time of *Davis* and ——, a deviſe of lands to *two* perſons and *their heirs*,——one of them dies during the life of the teſtator; and the queſtion was, "*Whether the ſurvivor ſhould* "*take* THE WHOLE *or not*;"—it was held *he ſhould*; which plainly ſhews *it was a will and diſpoſition* FROM THE TIME OF MAKING IT.—Suppoſing *A.* has a manor, and makes his will and deviſes this manor, and *before* the death of the teſtator *a tenancy eſcheats* to the lord of the manor, and *after that* the teſtator dies; the queſtion is, "whether

"ther

" ther the *eſcheated tenancy* ſhall paſs," becauſe the manor is deviſed, and THAT *is part of it;* for this tenancy is not deviſed as a diſtinct thing, but as *a part of the whole*, which he could deviſe.

I look upon it to be lord *Coke's* opinion (in *Butler* and *Baker*'s caſe, in the third report,) that *a deviſe is a* DISPOSITION; and that caſe was adjudged in the Exchequer chamber by all the judges, and that *a cuſtom to deviſe* OUGHT *to be conſtrued* THE SAME *as in common law.*

Therefore for theſe reaſons, I hold the judgment ought be given for defendant.

I. In regard it is a will, *at the time of the making.*

II. In as much as, *the teſtator had not power to give* WHEN HE HAD NOT.

III. The *conſtant* manner of pleading ſhews, the *neceſſity* of the teſtator's *being ſeiſed.*

IV. A deviſe of lands is not comparable to a deviſe of a perſonal eſtate, becauſe a perſonal eſtate is altering every day.

V. Becauſe a deviſe is repugnant to the nature of a purchaſe;—a purchaſe is to the deviſor and *his* heirs, and a deviſe to *another* and his heirs; and becauſe there is *no caſe nor authority in law, to warrant any contrary judgment.*

Indeed I was very inclinable to make this a good deviſe if I could, becauſe *the intent is very ſtrong*, and that will weigh much in a will;

a will; but when I conſidered more of it, I could find no opinion to favour it, but that of ſerjeant *Lovelace*, WHICH *is not to be ſupported;* becauſe the caſe reported is *miſtaken.* I do not give my opinion ſo much on the word—*having*, but that AT THE TIME OF MAKING THE WILL *he had* NOT *the land;* and ſo agreed by *Dyer*, that a man *muſt* be the owner of the land at *that* time.

Powell. I would have made it good if I could; but it is inconvenient it ſhould be ſo; for when a man is beyond ſea, or in foreign parts, or in priſon, and have made his will in this manner, he may have many thouſands a year deſcend to him from other relations, that he may know nothing of, *at the time* of making the will.

Holt. I would have made it good if I could.

Powys. } The intent was plain.
Gould. }

So judgment was given for the defendant *per tot' cur'*.

This judgment was affirmed on a writ of error in the houſe of lords, 24 *Feb.* 1707.

Arthur

hur v. *Bockenham, C. B.* *

Lord Chief Juſtice Trevor *delivering the opinion of the court.*

THE queſtion is,——" whether theſe " lands, (that is, the moiety named " in the ſpecial verdict,) do well paſs in " the will *to the defendant Frances Bockenham*, or no;" for if they do not paſs, then this moiety belongs to the leſſor of the plaintiff.

And we are unanimouſly of opinion, that theſe lands do *not* paſs to defendant by this will.

The queſtion, touching the validity of this will, depends,

Firſt, On conſideration of the ſtatute of wills, 32 *Hen.* 8. which was made to enable perſons to deviſe lands by their laſt wills.

Secondly, On the conſideration of the cuſtom of gavelkind, which is particularly found in this verdict.

Firſt, In the firſt place I will conſider, whether the ſtatute enables any one to deviſe land *he is not owner of*, nor has any intereſt in, *at the time when the will is made*, but doth purchaſe lands in his life-time after making ſuch will.

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* This caſe is reported in *Fitzgib.* 233. and in *Holt* 750.

This

This depends on the conſtruction of that act, which ſays, " that all and every perſon " and perſons *having* manors, meſſuages, lands " and tenements, *ſhall* have full and free " liberty to diſpoſe and deviſe the ſame by " his laſt will and teſtament:"—Whether the word " *having*" makes it neceſſary, that the teſtator *ſhould have the poſſeſſion* of, or *an intereſt in the land* AT THE TIME OF MAKING HIS WILL,—or, whether it be ſufficient that he have or *purchaſe* the lands, at any time *after* making his will, *before* his death.

To come at the meaning of this ſtatute, I will ſuppoſe this act lately made, and that there had been no conſtruction made thereof, but that the queſtion was entirely new and undetermined, that it were now *res integra*,—what *then* would be a reaſonable conſtruction of theſe words of the act;—in the next place I will conſider what conſtruction this act *ought* to receive, as it has been already expounded and determined, and from the conſequences of ſuch determination.

As to what would be a reaſonable conſtruction, ſuppoſing it were to be made *de novo*, and to be originally expounded, I am of opinion, it would be a *very reaſonable* conſtruction, that this act ſhould *not* enable any perſon to deviſe land *he has not*, nor is owner of, *at the time of making his will*, UNLESS HE REPUBLISHES IT, which is the ſame in ſubſtance, as new making it.

The general rule in expoſition of acts of parliament is, that all doubtful matters, *&c.*

where

where the expreſſion is in *general* terms, *they to receive ſuch a conſtruction which may be agreeable to the rules of the common law, in caſes of that nature;*—for the ſtatutes are *not preſumed* to make any alteration in the common law, further or other than the act doth declare expreſsly; therefore, in all general matters, the law preſumes the act did not intend to make any alteration; for if the parliament had that deſign, they would have expreſſed it in the act.

Now how will the common law influence *this* matter before us? firſt, it is plain by the rules of the common law, (that is, ſuch rules as are to govern conveyances and diſpoſitions of eſtates,) that the law did *never* allow any perſon, by any conveyance at common law, *to diſpoſe of the lands he had not*, or had no right or intereſt in, *at the time of making and executing* ſuch conveyance; ſo is 1 *Inſt.*. 265. it is there ſaid, "if one "releaſe all the right he *has*, and all the "right he *ſhould* or could have for the fu- "ture, tho' in *expreſs* words, which ſufficiently ſhew the intent of the party, yet "ſuch releaſe is void *as to any after-right*," "and was never yet contradicted.

However, there are *ſome* exceptions to this rule, as to releaſes of *future* rights, that is, that in ſome caſes a man may releaſe a future right, tho' *by the bare releaſe it can never paſs;* as the 1 *Inſt.* which I cited before.—If there be father and ſon, and the ſon diſſeiſe the father, and *being in poſſeſſion makes a feoffment in fee*, in the life of his father,

father, tho' no right or eſtate is yet deſcended on him from his father; yet *this feoffment will bar* HIM *of* THIS *future poſſible right*, WHEN *it does deſcend and come to him*; but this is grounded on a particular reaſon, that is, becauſe he had *more* than a mere right, for *he had the* POSSESSION *of the land*, therefore might make a legal conveyance thereof; and *the law favours extinguiſhment ſo rights, ſo that the right and the poſſeſſion may go together*; beſides a feoffment is of a high conſideration in the law, becauſe *executed by livery*, and cauſes a tranſmutation of the poſſeſſion, and therefore *is carried to the extinguiſhment of* FUTURE RIGHTS, *in favour of him who has the conveyance*: for by this feoffment he did not convey a bare right only, but might by law make a feoffment thereof, and by implication on ſuch feoffment and livery, *all future rights of him who made it are extinguiſhable*; for being in poſſeſſion and conveying the land itſelf, *he conveys all rights attending thereon, whether preſent or future*; but yet this doth not bar his heir at law; for he may enter notwithſtanding, and as to him the right is not extinguiſhable abſolutely, tho' at the ſame time the feoffment is good againſt him who made it.——This general rule again admits of another exception, and that is in the caſe of a releaſe *with warranty*; where a man makes a feoffment with warranty, *that warranty will bar a* FUTURE *right*, and that will go to the heir and bar him too; but then, *that* is grounded on a particular reaſon, for *the warranty bars to avoid circuity of action*; for if the heir

heir of him who made the warranty ſhould recover the land againſt his father's grantee, this land when deſcended to him, *would be aſſets in his hands, and be liable to the warranty*, ſo that it works an extinguiſhment of his *future* right by *rebutter*.

There is no caſe, that by any *legal* conveyance at common law a man could convey lands he had *no right to, nor in poſſeſſion thereof* AT THE TIME *of ſuch conveyance:* in the firſt caſe he had not the poſſeſſion, nor any preſent right; but if he had, by the releaſe it would have been extinguiſhable to him who had the poſſeſſion, becauſe he who had the poſſeſſion, (which the law favours,) ſhould not be diſturbed; but *future* rights it was *never* extended to.

Yet the law has allowed releaſes of rights, which are in the nature of *poſſibilities*; a man may releaſe to him who has the poſſeſſion a poſſible right only, tho' it does not allow him to transfer or convey away *to a ſtranger* ſuch right; and that is the reaſon the law allows a man to releaſe an executory intereſt in a term deviſed to him, and is in the nature only of *a poſſibility*; but *yet he cannot aſſign it away to a third perſon*, tho' he may, as I have ſaid before, releaſe this right *to the poſſeſſor* of the land by way of extinguiſhment; ſo that the rule of conſtruction of conveyances at common law will be *the ſame rule to expound this ſtatute*; but to narrow this queſtion a little more, I agree that deviſes of land have *not* been ſubject to the *ſtrict* rules of conveyances at common

common law, becauſe *the law favours diſpoſitions by will*, to make them agreeable to the *intent* of the teſtator; whereas conveyances at common law ſtand on a different foot.—In the caſe of wills the teſtator is *inopi concilii*, and has no opportunity of obſerving the formalities of law; therefore wills are *not* in *all* caſes ſubject to the rules of conveyances at common law; but then all this is grounded on the ſuppoſition that the teſtator *has* wherewithal *to make* diſpoſition of.

Let us then conſider how the law makes conſtruction in what comes neareſt to wills, and that is conveyances of land *to uſes*, which the ſtatute of the 27 *Hen.* 8. hath executed into poſſeſſion; the rules of conſtruction in theſe caſes are the *moſt proper* rules to be adapted to wills.

Wills have been all along conſtrued according to the intent, and ſo has the law always ſupported thoſe conveyances to uſes, on the ſuppoſed intention of the party to ſupply little defects, as may be ſuppoſed to be in them.

Now, by conveyances to uſes at common law, could any man convey an uſe in land which he *had not* at the time of making the conveyance? Surely he could not; and that is plainly proved by the caſe of *Yelverton* and *Yelverton*.—there the father covenanted to ſtand ſeiſed of lands *which he afterwards ſhould purchaſe*, to the uſe of himſelf for life, and afterwards to his youngeſt ſon and his heirs;—*afterwards* he purchaſed land and died; and the queſtion was, "whe-

3 *Cro.* 401.
27 *H.* 8. *c.* 10
10 *Rep.* 85.
Holt 750.

"ther

" ther the eldeſt, or youngeſt ſon ſhould " take it;" and it was reſolved, that *no uſe could ariſe to the* YOUNGEST *ſon*, being of land that *he had not* AT THE TIME *of making the conveyance*; and that is grounded on very good reaſons, becauſe *he cannot raiſe a uſe of land which is not his own*; for if a man who has *no right* to land can raiſe a uſe of that land, then *two at the ſame time might raiſe uſes*; for it cannot be denied but that he who is owner of the land may diſpoſe of it, and raiſe what uſes he pleaſes, and that he is the proper perſon on a ſale, to declare the uſes. It is impoſſible the ſame land ſhould be to the purchaſer for life, with remainder to his youngeſt ſon and his heirs, and at the ſame time be to him and his heirs; theſe would be contradictory uſes, *being at one and the ſame time*, as being declared by different perſons.

It is allowable indeed, for a man to covenant that he *will* purchaſe lands by ſuch a time, and levy a fine thereof, and that the ſame ſhall be and enure to ſuch and ſuch uſes.

But the reaſon of that is, when the lands are purchaſed, and a fine levied, *the uſe ariſeth on the fine*, and not on the deed made by him *before* he was owner of the land; and tho' he could not declare the uſe *before* he had the land, yet *the fine raiſes the uſe*, and *the deed made before is only an evidence of his intention* that it ſhould be to ſuch uſes, if no uſes were declared at the time of levying the fine, for *at that time* he might declare *other* uſes; but no other uſes being declared, that deed ſerves for an evidence

of

of the intention of the party, no other intention appearing.

To apply *that* to this caſe;—here is a conveyance made, whereby land is diſpoſed of which he *had not* at the time of making the will, and is a diſpoſition to take effect *in futuro*, and ſo was that caſe, a grant and diſpoſition of land *when he ſhould purchaſe it*; ſo this will cannot be a preſent diſpoſition of what he had not, but a declaration how the land ſhould go at his death; but it is very plain that *making the will is the foundation, and is an* INCHOATE *diſpoſition*; ſo that if the deviſor has not the land *at the time*, will *it not* paſs. *Show. Parl. Ca.* 157.

There is yet a further reaſon why wills ſhould receive ſuch a conſtruction *as conveyances by way of uſe*, and why they ſhould imitate ſuch conveyances;—becauſe it appears that the ſtatute of wills was made *to ſupply the power of declaring* uſes by laſt wills and teſtaments, which they had *before* the 27th of *Hen.* 8. of uſes; for tho' the ſubjects, *before* the 32d of *Hen.* 8. of wills, had *not any* power to diſpoſe of their lands by their laſt wills, yet *they had what was tantamount*, which was *a power to declare uſes*; for before the 27 *Hen.* 8. (which executes the poſſeſſion to the uſe,) all the lands were ſubject to the *ceſtui qui uſe*, and he had a power to declare the uſe of land; the truſtees had the poſſeſſion as *he* thought fit, either by deed or will, ſo that in effect he had a power of deviſing by will *by declaring the uſes the truſtees ſhould ſtand ſeiſed to, after*

his death; but when the 27 *Hen.* 8. came and executed the poſſeſſion to the uſe, then the *ceſtui que uſe* had *no ſuch power* of declaring the uſe as before, becauſe THEN *the uſe and the land were the ſame thing*, being united together; and that is the reaſon why *this* ſtatute of wills, gave men power to diſpoſe of their lands by will, which was given in lieu of *that* power which *ceſtui que uſe* had *before*, of declaring the uſes of the land as he thought fit; therefore there is great reaſon that a will ſhould receive the *ſame* conſtruction.

But it is objected,—that a will is not to be conſtrued according to conveyances by deed at common law,—becauſe a will is *no preſent* and immediate diſpoſition of land, and is not like a deed which takes effect immediately by delivery; for in ſuch caſe a man muſt have the land *at the time*, or elſe it is againſt the nature of the grant, or immediate gift, to diſpoſe of what he has not: —but a will is another thing, it is only *a future diſpoſition* in caſe the man dies without any other alienation; and is ambulatory, and not completed or conſummated till his death; therefore good reaſon he ſhould be able to diſpoſe of the lands he ſhould have or purchaſe *before* his death, becauſe it does not take effect *till* death.

In anſwer to this objection, I ſhall diſtinguiſh to *what* purpoſes a will does *not* take effect *till death*,—and to what purpoſes it does take effect *from the time of making*, and

before

before death; it is true to many purpoſes a will takes no effect till the teſtator's death; but on the other hand, to many other purpoſes it takes effect from the time of making the will. *Show. Parl. Ca.* 157.

Indeed, as to veſting *an intereſt* in the deviſee, the law has regard to the death of the party *only*; for *no intereſt can veſt in the deviſee as long as the teſtator lives*, and a will in its own nature, is not to paſs any thing but on ſuppoſition of the teſtator's death; for *it* is a proviſion and direction how his eſtate ſhall go, when he can keep them no longer.—Where a man deviſes lands to another, and the deviſee happens to die *before* the deviſor, *this is a void deviſe*, and the lands do not paſs; for if they ſhould, *the heirs of the* DEVISEE *muſt take*, contrary to the intent of the deviſor; for by the will he was intended to take by deſcent, and if the lands paſs, he muſt now take by purchaſe. —In this regard alſo, a man's wife may take by his will, tho' ſhe cannot take by any conveyance at common law, for the will not taking effect *in point of transferring an intereſt* till *after* the huſband's *ſhe is in the nature of a ſtranger*, ſo the land will well paſs to her; and in many other caſes of this nature a will takes *no* effect till the death of the teſtator.

But when you conſider another thing *neceſſary* to make a will good, as a neceſſary qualification in the teſtator, which is,—the power and capacity of diſpoſing by his will,—there (I take it) *the law regards the*

time of making the will, and as to the power of diſpoſing by will, that conſiſts of ſeveral particulars; as,

Firſt, To enable the teſtator to diſpoſe by will, or any other way. the law requires that he ſhould *have* an intereſt in the thing he is to diſpoſe of; and if he have no intereſt in the thing to be diſpoſed of, how can he be ſaid to have a power of diſpoſing?

Secondly, The teſtator muſt not only have an intereſt in the thing deviſed *at the time* of making the will, but *muſt have a diſpoſing mind too*, he muſt have ability and capacity *in point of diſcretion and underſtanding*, AS A RATIONAL MAN; and theſe two qualifications are *neceſſary* to make up the power of diſpoſing; and this power muſt be perfect and complete *at the time* of making the will, and none of theſe qualifications coming *after*, tho' before the death of the teſtator, will make this power good, and the will *effectual* in law. Theſe are *perſonal* qualifications, and *muſt be had* at the time of diſpoſing, and will be too late to come after. As to qualifications in point of diſcretion, if a man be *non compos*, and not in his right ſenſes *at the time* of making his will, tho' he *afterwards*, and long *before* his death, becomes a man of ſound judgment and memory, yet *the will is a void will*, and can by no means be made good, becauſe he wanted the diſpoſing power *at the time* of the diſpoſition, which was at the time of *making* his will;—the law is the ſame of a feme covert. If a *married* woman makes a will, tho' ſhe become a widow and unmarried before her death, yet ſuch is a void deviſe

viſe *without* re-publication; for the law *here* regards *the time* of making *only*; ſo in the caſe of an infant, if he makes a will, tho' he be of age, nay, tho' he be ever ſo old, when he dies, yet *it is a void deviſe*, becauſe he had not diſcretion, nor a diſpoſing power *at the time* of making; for it is *that* which the law regards in theſe caſes, and NOT *the time of the* DEATH of the teſtator.

As to the other point, or neceſſary qualification, which goes to the power of diſpoſing, which is his ownerſhip of the land, the law requires *that* to be complete *at the time* of making the will; conſider, *as to* THIS *point* THE LAW IS VERY STRICT, that the teſtator ſhould *have a diſpoſing power* at the time of making the will; for it is ſo far from allowing a *ſubſequent* power by acquiſition *after* to make the will good, that *the law requires* A CONTINUANCE *of the* SAME *intereſt the deviſor* HAD AT THE TIME *of making the will*, TO REMAIN UNALTERED, *even to the time of the death*, for that any, even the *leaſt* alteration of this intereſt, *is an* ACTUAL *revocation of ſuch will*;—as where there is tenant in tail, and he makes his will, and deviſes theſe lands away; now, tho' he hath an inheritance in theſe lands, and they are his own, and he could diſpoſe of the abſolute inheritance in fee-ſimple *by fine or recovery*, yet if at any time *after* the making ſuch will, *before* his death, he ſuffers a recovery to him and his heirs, and ſo alters the eſtate from a tail to a fee, *this* is alſo ſo far from making his will good, that it *is an* ACTUAL *revocation of the will*;—yet he was 3 *Lev.* 108.

owner

owner of the land *at the time* of making the will, and is no more now, only *the eſtate is altered*, and he has now another ſort of fee; —nay, *the law is ſtill* STRICTER; as, where there is tenant in fee-ſimple, who deviſes his land to another, and *after* that, and ſome time *before* his death, he *makes a feoffment* of theſe lands, to *another* for the uſe of himſelf and his heirs; tho' this to ſome purpoſe is *no* alteration, for he is abſolute owner of the eſtate as before, yet this does *not* make the will good, but *is a revocation thereof;* and ſo it was adjudged in the caſe of Lord *Lincoln*, tho' ſo ſmall an alteration.

Show. Parl. Caſes 154.

This ſhews the law *requires* that the teſtator ſhould have *a complete power of diſpoſing* AT THE TIME *of making the will*, and that the power and intereſt he had at that time ſhould *continue*, and be the VERY *ſame* at the time of his death.

Now if the law will not allow any, the leaſt alteration, of eſtate from that which he had *at the time* of making the will, but *will rather work a revocation* and deſtruction of the will, I do not ſee how the teſtator's purchaſing *after* can work here, to make the will good, when he had *nothing*, no intereſt in, or to, the land *at the time* of making the will;—this is a far greater alteration than from a tail, to a fee, or from one ſort of fee to another; for *this, is an acquiſition of* NEW *right, and a new power;*—it is totally a new intereſt purchaſed *after* making the will, when he had neither right or intereſt *at the time* of the will, which can never have

have effect to make this will good, ſo as to give the power to diſpoſe of the lands.

In a will, the law requires the deviſor to have this power complete and entire, both in regard of the eſtate and intereſt to be diſpoſed of, as in regard of his underſtanding and diſcretion, which are neceſſary to be had *at the time* of making the will; and tho' they happen afterwards, before his death, yet they come too late; ſo that if this act of wills were now *de novo* to be conſtrued, it would receive this conſtruction,——that a man *having* lands, ſo as to give him a power to deviſe them by will by virtue of the ſaid act, *muſt be meant* having *at the time* of making his will, and *not* at the time of his *death* only.

Secondly, But then in the ſecond place, this being a law made a long time, that has received many *uniform* determinations agreeable to *this* conſtruction,—this ought to be of great conſideration always,—that the law may be certain when there has been ſolemn determinations after long debates, and an acquieſcence under them, and when accepted and received as *a rule of property*, tho' ſome ſhould be diſſatisfied in their private judgments. Were the matter to be newly reſolved, it is but reaſonable *we ſhould acquieſce and determine the ſame way* TO PREVENT GREATER MISCHIEFS, which might ariſe from the uncertainty of the law; now there have been *ſeveral ſolemn* reſolutions and acquieſcences under them, that A MEN CAN-

NOT

NOT DISPOSE OF LANDS BEFORE HE HAS THEM.

As to the caſe of *Brett* and *Rigden*, I do not take that to be a determination of this point; that caſe was; a man had lands in a certain pariſh or place, and made his will, and gave away *all* his lands in *that* pariſh, and afterwards, ſome time before his death, purchaſed *other lands* in the ſame pariſh; and the queſtion was, "whether theſe *new* "purchaſed lands ſhould paſs or not;" and held they would *not*: but that judgment was *not* grounded on this queſtion, whether he could deviſe lands he had not, but whether the words of the will *in point of intention* would extend further than to *thoſe lands he had* at the time of making the will, there being in that will no *future* words, nor declared intention of paſſing any lands he ſhould purchaſe *in futuro*;—that the intention of the teſtator was *ſatisfied* in paſſing thoſe lands he *had* at the time of making the will; for there being no future words in the will, it might be the intention of the teſtator, that the deviſee ſhould have the land at the time of making his will, and *the heir* at law *have the new purchaſed* lands by deſcent.

But there are ſome caſes in point, as *Butler* and *Baker*'s caſe in the third part, and *Leonard Lovies*'s caſe in the tenth report of lord *Coke*; they *expreſsly* go on the word "*having*" at the time of making the will, and *this* has been all along taken as the rule; and

and all people ought to acquieſce therein, being ſo often and ſo ſolemnly *in this manner*, determined; and now I am come to the ſecond point, on which *this* depends, that is, the *cuſtom*.

Whether tho' it ſhould be allowed that by will a man cannot diſpoſe of land which he had not at the time of making the will, and which he purchaſed afterwards;—yet, whether *ſuch* deviſe may not by *ſuch cuſtom* be made a *good* deviſe; and I am of opinion it will not.

The cuſtom found is, no more than that gavelkind land *may* be deviſed by will in writing; but there is *no* ſuch cuſtom found, as that a man may deviſe gavelkind land that he has *not*, but only that gavelkind land *is* deviſable.

If it be a reaſonable conſtruction of the act of wills, that to enable a man to deviſe *he ſhould have* the land *at the time* of making his will, why ſhould not this cuſtom be ſo expounded, ſince the cuſtom is only to enable a man *to deviſe* land;—if it be a reaſonable conſtruction as to ſocage lands, why not as to gavelkind lands?—There is no more particular reaſon in one caſe, than in the other, and the rather, becauſe all cuſtoms, which are againſt the common law, ought to be taken *ſtrictly*, nay *very ſtrictly*, even *ſtricter* than an act of parliament that *alters* the common law.

It is a general rule, that *cuſtoms are not to be enlarged* BEYOND THE USAGE, becauſe it is the uſage and *practice* that makes the law in ſuch caſes, and *not* the reaſon of the thing;

thing; for it cannot be ſaid that a cuſtom is founded on reaſon, tho' an unreaſonable cuſtom is void; for no reaſon, even the higheſt whatſoever, could make a cuſtom, or law; it is no particular reaſon that makes any cuſtom or law, but uſage and practice itſelf, without regard to any reaſon for ſuch uſage; therefore you cannot enlarge ſuch cuſtom by any parity of reaſon, ſince reaſon hath no part in the making of ſuch cuſtom.

In conſtructions of acts of parliament it is otherwiſe, and there is a greater latitude allowed in them, and the reaſon which induced the legiſlature to make ſuch acts to take away the common law may be, and is uſually, urged in, in many conſtructions of them; therefore in doubtful caſes *we* may enlarge the conſtructions of acts of parliament *according to the reaſon and ſenſe of* the *legiſlature*, expreſſed in other parts of the acts; or, conſtrue them *by conſidering the frame and deſign of the whole*;—but it is not ſo in the caſe of a cuſtom, becauſe not founded on any particular reaſon, for *the reaſon of the common law is againſt it*; but the law allows uſage in particular places to *ſuperſede* the common law, and is the local law, which is never to be extended farther than the uſage and practice, which makes it law.

Now there is nothing *here* found of a uſage, to deviſe lands which a man *had not*, or which he ſhould *afterwards purchaſe*; then we muſt enlarge this cuſtom to deviſe lands which the deviſor had *not* at the time

of

of making his will, *which is beyond a* REASONABLE *conſtruction;* for tho' it be lawful and cuſtomary to deviſe lands a man *has*, yet it does not follow by the ſame reaſon, that a man may deviſe the lands he *has not*, it being a different conſideration, becauſe the common law enables a man to diſpoſe of what he *has;* but there is not the ſame parity of reaſon to diſpoſe of what he has *not*, being a thing againſt reaſon, that any man ſhould have a right to diſpoſe, when he had nothing to diſpoſe of; therefore ought not to be carried in parity of reaſon further than in cuſtom, which ought to be conſtrued more ſtrictly than it would be at common law.

But then it is further objected, that this cuſtom is *a general power of diſpoſing*, as far as a man may, his *goods and chattels* at common law, which he may deviſe in manner as is contended the lands ought to go in this caſe; for it is ſaid (ſay they) in *Fitzherbert's Natura Brevium*, that the cuſtom of gavelkind is to deviſe lands *tanquam bona & catalla;* but ſurely theſe words do not prove that gavelkind land *by ſuch cuſtom* may be diſpoſed of to all purpoſes, as goods and chattels; there is moſt certainly a great difference between a deviſe of lands and a deviſe of goods and chattels; for goods and chattels were always teſtamentary things. If a man makes his will, the law gives all his goods and chattels and perſonal eſtate to his executor; by his being named executor he has a right to all the perſonal eſtate;

tate; and if a man made no will, the ordinary diſpoſed of the inteſtate's eſtate, till the ſtatute of granting adminiſtration was made; ſo as to the perſonal eſtate, the law appointed no perſon who ſhould go in ſucceſſion as to *that*, unleſs the teſtator diſpoſed of it; but as to the *land*, the law has appointed *the heir* to repreſent the anceſtor, and to ſucceed him *in his inheritance*; therefore lands ought not to go from the heir, to whom the law has given them, otherwiſe than as expreſsly deviſed from him to ſome other.

And tho' the teſtator doth diſpoſe of his goods and chattels by his will, to the legatees yet they all paſs to the executor, and *he has them all in the nature of a* TRUSTEE, and he alone has a title in law to them, and nothing paſſes to a legatee, nor can a legatee take any thing to him deviſed *until the executor aſſent*; ſo that this in effect amounts to no more than a direction to the executor how he ſhall diſpoſe of the teſtamentary eſtate, *when debts* and funeral expences are paid.

Teſtaments of goods and chattels are by the civil law of *eccleſiaſtical* conuſance, and ſubject to the rules of the ſpiritual court, and to be governed by their law; but as to lands, nothing enables a man to take but *the common law*, and the heir is in by deſcent, as *being a perſon appointed by the common law to ſucceed and repreſent his anceſtor*; and if lands are deviſed away by will from the heir, they paſs immediately by the will to the deviſee;

deviſee; ſo that there is a great difference between a diſpoſition of lands, and of goods and chattels.

The caſes cited at the bar to ſupport the deviſe were *Brook* 115. title *Deviſe; Fitzherbert* and *Statham's Abridgment* 11. the ſame title; and theſe were preſſed as authorities in point.

All theſe caſes were founded on the year book, 39 *Hen.* 6. I have looked into that book, but it does not by any means warrant ſuch opinion; for the principal caſe was no more than this;—a man deviſed land, and was *afterwards* diſſeiſed, and *then* died; the queſtion there was, "whether it was a good "will, becauſe he did not *die ſeiſed;*" and the book ſays, But ſuppoſe a man ſhould *after* making his will *purchaſe* lands; and there is no reſolution to *that*, but only a query;—ſo that theſe books are only collections from, and inferences upon, 39 *Hen.* 6. which warrants no ſuch thing, but *rather the contrary;* eſpecially if it be conſidered *that caſe* muſt be on *a cuſtom* to deviſe, becauſe *long before the ſtatute of wills.*

Rep. in Eq. 77 *Greenhill* v. *Greenhill.*

Therefore I think for theſe reaſons the plaintiff ought to have his judgment.

J. S. ſeiſed in fee deviſed lands to his grandaughter for life, remainder to his right heirs male for ever,—dies, leaving his grandaughter heir at law, and a *deceaſed* brother's ſon his next heir male; the deviſe of the remainder *is void. Dawes* and *Ferrers*, 2 *Will. Rep.* 1.

Deviſe

Deviſe of lands to truſtees, in truſt, if the eldeſt ſon of A. *turn proteſtant*, then to ſuch eldeſt ſon;—this is a good deviſe, as not being *to* a papiſt, but a proteſtant. *Carteret* and *Carteret*, 2 *Will. Rep.* 32.

Deviſe to *A. a proteſtant* for life, remainder to *B. a papiſt* for life, remainder to *C.* a proteſtant;—*A.* dies, *B.* being a papiſt is diſabled to take, and *C. ſhall take preſently*, in the ſame manner, as if the remainder had been limited to *a monk*. *Carrick* and *Errington*, *ibid.* 361, 362.

The ſtat. of the 11 & 12 *W.* 3. *c.* 4. which diſables a papiſt from purchaſing lands, *diſables him from taking* BY PURCHASE, conſequently from taking by deviſe. *ibid.*

Deviſe of lands to *A.* a proteſtant for life, remainder to *B.* a papiſt for life, remainder to truſtees for the life of *B.* in truſt to let *B.* take the profits, and to preſerve the contingent remainders:—the truſt to let *B. the papiſt* take the profits *is void;* but the truſt to preſerve the contingent remainders *is good*. *ibid.* 362.

Deviſe of 100*l.* and 50*l. per annum* to *A.* and his heirs, and if *A.* die without heirs, then to a charity; *A. dies without iſſue, living the teſtator;* the will *is void* as to the whole, and the charity cannot take. *Attorney General* and *Gill*, 2 *Will. Rep.* 369.

A papiſt *conforming* at eighteen, is capable of taking by deviſe *made* when *under* that age. *Hill* and *Filkins*, *&c. Lucas's Rep.* 481, 536.

A deviſe to one and *the heirs of his body*, and if he go about to alien, his eſtate ſhall ceaſe,

ceaſe, and the lands go over to an hoſpital; the deviſe over *void*, as an invention to create perpetuities. *Company of Pewterers* and *Chriſt's Hoſpital*, 1 *Vern.* 161.

J. S. deviſed his eſtate to the drapers company and their ſucceſſors, in truſt to convey the premiſſes to his godſon *Matthew Humberſton* for life, and afterwards, on the death of the ſaid *Matthew*, to his firſt ſon for life; and ſo to the firſt ſon, of that firſt ſon for life, *&c.* and if no iſſue male of the firſt ſon, then to the ſecond ſon of the ſaid *Matthew Humberſton* for life, and ſo to his firſt ſon, *&c.* and in failure of ſuch iſſue of ſaid *Matthew*, then to another *Matthew Humberſton* for life, and to his firſt ſon for life, *&c.* with remainders over to many of the *Humberſtons* (as the reporter thinks, about fifty) for their lives ſucceſſively, and their reſpective ſons, *when born*, for their lives,—*without giving any eſtate in tail to any of them*, or *making any diſpoſition of the fee*. *Per* Ld. Chan. *Cowper*, Tho' an attempt to make a perpetuity for ſucceſſive lives be vain, yet ſo far as it is conſiſtent with the rules of law, it ought to be complied with; therefore his *Lordſhip* decreed, that *all* the ſons of the ſeveral *Humberſtons*, *already born*, ſhould take eſtates for their lives, but that the limitation to the ſons *unborn* ſhould be *in tail*. *Humberſton* and *Humberſton*, 1 *Will. Rep.* 332. 2 *Vern.* 737. S. C. *Prec. in Chan.* 455. S. C. *Gilb. Rep. in Eq.* 128. S. C.

If I deviſe "all my lands, tenements and "*hereditaments* in *Dale*," and I have a manor in

in *Dale*, ſuch manor being an hereditament in *Dale* will paſs; tho' perhaps it might be a doubt, if a man has lands, and alſo a manor in *Dale*, of which the lands are *not* parcel, whether by the deviſe of all his lands in *Dale* his manor will paſs; *per* Ld. Chan. *Talbot* inthe caſe of *Haſlewood* and *Pope*, 3 *Will. Rep.* 322.

J. S. deviſes all his freehold houſes in *A.* and hath *none* but leaſehold houſes, theſe ſhall paſs; *ſecus* in a grant. 1 *Will. Rep.* 286.

A. deviſed in the following manner: "I "make my niece executrix of all my goods, "lands and chattels:" the teſtator had a real and perſonal eſtate, but *no* leaſes or intereſts for years in any lands whatſoever; and the queſtion was, "*whether any or what eſtate paſſed in the lands by this deviſe;*" Ld. Chan. was clear of opinion, that the *real* eſtate did *not* paſs by theſe words, and that the word *lands* was not (as objected) uſeleſs, and to be rejected, for that in all probability *there might be rent in arrear of thoſe lands* which would paſs to the niece by her being made executrix. *Piggot* and *Penrice*, 1 *Vol. Abr. Eq.* 209. *Ca.* 13. *Prec. in Chan.* 471. S. S. *Gilb. Rep. in Eq.* 137. *Comyns* 250.

J. S. deviſes "*all* his lands in *A. B.* and "*C.* and *elſewhere;*" the teſtator *hath* lands in *A. B.* and *C.* and lands of much greater value in another county; the lands in the other county *ſhall paſs* by the word "*elſe-*"*where.*" *Cheſter* and *Cheſter*, 3 *Will. Rep.* 61.

By

By the word *lands* an advowſon will *not* paſs; by *hereditaments* it may. *Savil* and *Savil, Forteſc. Rep.* 351. *Vide Black. Com.* 2. *V.* 17 20, *&c.*

Lands deviſed to *A.* and after in the ſame will to *B.* they ſhall take it between them. *Contra*, Ld. *Coke*'s opinion, that the latter clauſe *revoked* the former.——*Obiter. Fane* and *Fane.* 1 *Vern.* 30.

J. S. deviſes 300*l.* to all the natural children of his ſon by Mrs. *Heneage*; the natural children born *after* making the will ſhall *not* take; nay the children *in ventra ſa mere* ſhall not take. *Metham* and *The Duke of Devon*, 1 *Will. Rep.* 529.

A deviſe to "*relations*" is to be confined to ſuch as would take *by the ſtatute of diſtributions*; but their ſhares as to the taking *per capita* and *per ſtirpes* may be different. *Thomas* and *Hole*, *Caſes in Eq. temp. Talbot* 251.

Deviſe to *A.* and *his iſſue*, remainder to B. and his iſſue, remainder to the heirs of *A.*—*A.* dies without iſſue in the life of the teſtator; *B.* dies in the life of the teſtator, but *leaves iſſue*, who is alſo the heir of *A.* This iſſue ſhall *not* take an eſtate-tail, as iſſue of *B.* nor the remainder in fee, as heir to *A. Goodright* and *Wright*, 1 *Will.* 397.

J. S. deviſes to his wife for life, remainder to his grandaughter (who was his heir at law) for life, remainder to *his own* heirs male; a nephew, altho' he be next heir-male, cannot take by virtue of the laſt limitation, not having *both* parts of the deſcription meeting in him. *Dawes* and *Ferrars*, *Prec. in Chan.* 589.

J. S. deviſes the *ſurplus* of his perſonal eſtate to ſix perſons, to each a ſixth part; —one of them dies in the life-time of the teſtator, this ſixth part ſhall be taken as undiſpoſed of by the will, and *go to the teſtator's next of kin.* *Page* and *Page.* 2 *Will. Rep.* 489.

If lands be deviſed to *A.* and his heirs,—and *A.* dies *before* the teſtator, the heirs ſhall take *nothing;* for *heirs* is a word of limitation, and not of purchaſe: agreed *per tot' cur'.* 1 *Freem.* 293. *in C. B.*

A termor of 1000 years, without impeachment of waſte, deviſed the ſame to defendant, and if *he die without iſſue*, then to plaintiff; *per* Ld. K. this being a deviſe *after dying without iſſue generally*, is void. 2 *Vol. Abr. Eq.* 357. *Ca.* 3.

A perſonal eſtate was deviſed to *J. S.* and in caſe ſhe ſhould die without iſſue, then to *B.*—the deviſe over to *B. is void.* 2 *Freem. Rep.* 287. *Ca.* 357. *b.*

A deviſe to *A.* with ſeveral remainders, and a remainder over to the heirs-*male* of the deviſor—the deviſor had *no* heirs-male of his body *at his death;*—it is a *void* limitation, and *a collateral male cannot take* by this deviſe.—In the King's caſe a grant to heir-male is void, but in that of a common perſon it is *a fee*, and the word *male* is idle; but heirs-male, *&c.* in a will are always intended *of the body*, and *implies an eſtate-tail.* *Ford* and *Oſſulſton*, *Ca. temp. Q. Ann.* 189. 3 *Salk.* 336. S. C. a deviſe of a remainder *to his right heirs-male* MUST be intended right

right heirs-male *of his body*, and *no collateral heirs-male* ſhall take by ſuch a limitation by way of remainder.

Deviſe of a perſonal eſtate to *B.* and his iſſue, or to *B.* and if he die without iſſue, remainder over to *C.*—*is void*, and the whole intereſt veſted in *B. Gibbs* and *Barnardiſton*, *Gilb. Eq. Rep.* 79. *Prec. in Chan.* 323. S. C. & P.

In ejectment and ſpecial verdict.—*J. S.* poſſeſſed of *a long term for years* in lands, deviſed them to *A.* Sir *St. Andrew St. John*, and his two brothers *ſucceſſively*, provided that neither of them ſhould take *till after they are married*;—*Rowland* the third brother dies, Sir *St. Andrew* dies, the *ſecond* brother is leſſor of the plaintiff: the queſtion on the ſpecial verdict was, "whether "this was a good deviſe to Sir *St. Andrew* "*St. John* and his brothers?" It was objected, that this was a void deviſe for the *uncertainty* who ſhould take, by reaſon of the word *ſucceſſively*:—reſolved *per tot' cur'*, that the plaintiff ſhould have his judgment, becauſe the deviſe is *not* void for the uncertainty. *Ungly and Peale*, 2 *Vol. Abr. Eq.* 358. *Ca.* 8. cites *Vin. Abr.* tit. *Deviſe* (D) *Ca.* 19. *Vide Lucas's Rep.* 103. *Ongly* and *Pead*, S. C. 2 *Ld. Raym.* 1312. *Ongley* and *Peale*, S. C.

It has been ſaid, that if an eſtate has been given to a man and *his iſſue*, it is void for the uncertainty, becauſe it not appearing, whether *male* or *female*; but that has been held and determined ſince, *not to be* LAW;

and yet it is well enough in a deviſe; *per cur'* in *B. R.* in the caſe of *Shaw* and *Weigh*, *Gilb. Eq. Rep.* 28.

Teſtator deviſed 550 (omitting pounds) to his daughter *M.* and alſo deviſes 550*l.* to his daughter *B.*—*per Cowper* C. the ſubſequent deviſe to *B.* makes it extremely clear that the teſtator *meant* 550*l.* and it is as certain and good, as if the word (pounds) had been expreſſed. *Freeman* and *Freeman*, 2 *Rol. Abr. Eq.* 359. *Ca.* 11. cites *Vin. Abr.* tit. *Deviſe* (D) *Ca.* 22.

The father in his will taking notice, that "his ſon *J.* had much diſobliged him," declares thus; "I do hereby reſolve *not* to "give him any more than 20*l.* a a year for "life, to be paid him quarterly." *N. B.* This was a baſtard ſon, to whom the father had by a former will given 80*l.* a year; but in the ſecond will he takes notice of his ill behaviour at the univerſity, and deviſes that eſtate to his legitimate ſon: *J.* ſhall take *nothing* by this will, the words *not amounting to a* DEVISE. *Holder* and *Holder*, 2 *Vol. Abr. Eq.* 359. *Ca.* 12. cites *Vin. Abr.* tit. *Deviſe* (D b) *Ca.* 8.

J. S. poſſeſſed of a term deviſed it to *A.* and *B.* and if *either* of them died, and leave no iſſue of their reſpective bodies, then to *C.*—His honour held that the deviſe *over* was *void*. *Froth* and *Chapman*, 1 *Will. Rep.* 664. —Afterwards Ld. *Parker*, on an appeal, *reverſed* this decree. *Ibid.*

Deviſe of lands to *S.* and "the heirs of "his body;" *S.* died in the life-time of the

the deviſor;——this is in the nature of a lapſed legacy, and the heir of *S.* ſhall take nothing. *Wynne* and *Wynne*, 2 *Vol. Abr. Eq.* 360. *Ca.* 16. cites *Vin. Abr.* tit. *Deviſe* (W c) *Ca.* 18.

A. deviſed "all that his meſſuage or te-"nement in *E.*—to *F.* and his heirs, and "all the *reſt* of his meſſuages, lands, *&c.* "in *E.* and elſewhere, to *J. L.* in fee;" *F.* the devi*ſee* died in the life-time of the teſtator, ſo that this became a lapſed deviſe by his death.—In ejectment the ſole queſtion was, "whether this latter clauſe of the will "would carry over the lapſed deviſe to *J.* "*L.* the reſiduary deviſee; or, whether it "ſhould deſcend to the teſtator's heir at "law?"——Held *per cur'*, that the deviſe of *all the reſt* and reſidue of my meſſuages, lands, *&c.* did *not* convey what was *expreſsly* deviſed before, for the teſtator's intent appears to be to give his whole eſtate to *F.* and his heirs in *that* meſſuage, and *that at the time* of the will made, he had no reſt and reſidue in *that* houſe, and the deviſe to *F.* being void, *the houſe will go to the heir at law. Wright* and *Hall*, in *C. B. Forteſc. Rep.* 182.

A. bequeaths to her grandchild *B. ſome of her* BEST *linen*; this void for the uncertainty; yet the court recommended it to the executor to give ſome of the beſt linen to the legatee. *Peck* and *Halſey*, 2 *Will. Rep.* 387.

Precedents

Precedents of Wills.

THIS is the laſt will and teſtament of me *A. B.* of, &c. widow and relict of *C. D.* late of, &c. in the county aforeſaid, Gent. deceaſed. Whereas my ſaid late huſband *C. D.* did by his laſt will and teſtament, bearing date on or about, &c. deviſe to me and my heirs, all that his manor, capital meſſuage, meſſuages, mill, cloſes, lands, tenements, and hereditaments, in, &c. in the ſaid county of, &c. with their and every of their appurtenances, in truſt, to be by me ſold, or otherwiſe diſpoſed of, to and amongſt all my children by him on me begotten, in ſuch ſhares and proportions as to me ſhould ſeem meet; except ſuch of his ſaid children who ſhould in his lifetime have received their reſpective portions; and after ſeveral other deviſes and bequeſts, my ſaid late huſband by his ſaid will deviſed all there ſtand reſidue of his perſonal eſtate whatſoever, and whereſoever to me his ſaid wife, to be diſpoſed of by me amongſt my children, at ſuch time and in ſuch ſhares and proportions as I ſhould think fit. And whereas my ſaid late huſband at his death left iſſue by me nine children (and who are all of them ſtill living) that is to ſay, three ſons, *viz. George*, *John* and *Thomas*, and ſix daughters, *viz. Jane*, now the wife of of, &c. Gent. *M.* then and now the wife of of,

of, &c. Esq; and *C.* since married to, and now the widow of late of, &c. deceased, and *K.* now the wife of of, &c. Gent. and *Anne* and *Elizabeth*, not married. And whereas great part of the said premisses so devised to me by my said late husband as aforesaid, had been before settled by him on me for my life by way of jointure; and whereas for want of a suitable purchaser, and for that I did not think fit to sell or dispose of my jointure, I therefore have not sold the said real estate, but I have in my lifetime advanced and paid to and for my son and to and for each of my said daughters,

the sum of *l.* a-piece, for or towards their respective portions and advancement; and I have also given to my said daughters,

the sum *l.* a-piece, *viz.* *l.* in money out of my own pocket, and the sum of *l.* borrowed for them of my said daughter and for the payment whereof I have given my own bond (the said *l.* a-piece being for or towards their respective portions and advancement). And whereas my son has by my direction given his bond to my said son conditioned for the payment of the sum of *l.* to the and for which last-mentioned sum of *l.* I have made a deduction or allowance to my said son out of a sum

ſum or debt of *l.* that was then due or owing from my ſaid ſon to me: and whereas my ſaid late huſband did in his lifetime advance to or for each of my ſaid ſons and and my ſaid daughter *l.* a-piece, for or towards their reſpective portions; and I have likewiſe advanced and lent to my ſaid ſon ſeveral ſums of money to the amount of *l.* or upwards, and I am like to be a very great loſer thereby, my ſaid ſon having failed in the world, and having a commiſſion of bankruptcy againſt him. Now therefore I do hereby give, deviſe and appoint all and ſingular the ſaid manor, *&c.* in the county of aforeſaid to my ſon and of, *&c.* Eſq; and their heirs, upon truſt that they or the ſurvivor of them do and ſhall, as ſoon as conveniently may be after my deceaſe, ſell the ſame for the beſt price that can or may be gotten for the ſame, and do and ſhall pay and apply the monies ariſing by ſuch ſale (after a deduction of the coſts, charges and expences attending the execution of the truſt hereby in them repoſed, or relating thereto) in manner following; (that is to ſay) In truſt out of the monies ariſing by the ſaid ſale to pay to my daughter the ſum of *l.* and to my daughter thee ſum of *l.* and to my daughter the like ſum of *l.* (my ſaid two daughters and not having as yet had or received either

either from me or my ſaid late huſband any portions more than the ſaid ſums of *l.* a-piece) and to my daughter *l.* to my ſon the ſum of *l.* and to my daughter *l.* which *l.* to my daughter I direct to be paid into her own hands, and that her receipt alone for the ſame ſhall be a ſufficient diſcharge to my ſaid truſtees, notwithſtanding her coverture. And I will that intereſt after the rate of *per cent.* by the year be allowed for the ſaid reſpective principal ſum out of the rents and profits of the ſaid premiſſes ſo deviſed to be ſold as aforeſaid, from the time of my death until the ſaid premiſſes ſhall be ſold, or the ſaid principal ſums ſhall be paid and ſatisfied; and all the reſt and reſidue of the monies to ariſe by ſuch ſale I give, bequeath and appoint to my ſaid ſon his executors, adminiſtrators and aſſigns, for his and their own uſe and benefit: and I do hereby declare my mind and will to be, that if any of my ſaid children, or any of the huſbands of any of my daughters, ſhall in any manner controvert any of the diſpoſitions or appointments herein before by me made as aforeſaid, or ſhall refuſe to ſtand to or abide by the ſame, or ſhall refuſe or neglect to do or execute any reaſonable or proper act for confirming the ſame, or for ſale of the ſaid eſtate or premiſſes at aforeſaid, for the purpoſes aforeſaid, being thereunto requeſted, then ſuch of my ſaid children who, or whoſe huſbands ſhall controvert

trovert any of the diſpoſitions or appointments by me herein before made, or who ſhall refuſe to abide by the ſame, or ſhall refuſe or neglect to confirm the ſame upon requeſt as aforeſaid, his, her and their reſpective wives and children ſhall be deprived of and loſe all benefit and advantage of whatever is herein before given or appointed to or in truſt of them reſpectively, or for their reſpective uſe or benefit, and the ſame ſhall be divided amongſt my other children who ſhall conſent and agree to this my will, in proportion to what is herein before appointed to ſuch of them reſpectively as aforeſaid; and in ſuch caſe I do hereby give, deviſe and bequeath to ſuch of my ſaid children who, or whoſe huſbands ſhall controvert any of the diſpoſitions or appointments by me herein before made, or who ſhall refuſe to abide by the ſame, or ſhall refuſe or neglect to confirm the ſame upon requeſt as aforeſaid, all that undivided half an acre of all that piece or parcel of meadow or paſture land commonly called lying and being at in the pariſh of aforeſaid, containing ten acres, four, *&c.* or thereabouts, little more or leſs, the ſaid half acre hereby deviſed lying and being in the moſt northward part of the ſaid land, called and north on land called and weſt on land called and being together with the reſidue of the ſaid land called now or late in the occupation of To hold to ſuch of my ſaid child

child or children who, or whoſe huſbands ſhall controvert this my will, or refuſe or neglect to abide by and confirm the ſame as aforeſaid, his, her and their heirs, as tenants in common, as and for their whole ſhare of right and intereſt in the ſaid whole eſtate deviſed to be ſold as aforeſaid; and then I give, deviſe and appoint all the reſidue of the ſaid manor, meſſuages, *&c.* in the pariſh of aforeſaid to my ſaid ſons and and their heirs, in truſt, to be ſold as aforeſaid, and the money to be applied for the benefit of my other children who ſhall conſent and agree to this my will, in proportion to what is herein before appointed to or for ſuch other children reſpectively as aforeſaid, and in ſuch manner and form as the ſame is herein before appointed to or for them reſpectively as aforeſaid. I give and bequeath all and ſingular the goods and chattels, debts, effects and perſonal eſtate whatſoever, which I die poſſeſſed of, intereſted in, or intitled unto, as follows; (that is to ſay) To my eldeſt ſon I give the ſum of *l.* and I do hereby forgive him the ſum of *l.* out of the principal ſum of *l.* which he owes me upon bond; alſo I give to my ſon the ſum of *l.* and in caſe he ſhall think himſelf obliged in honour, or intend to pay to my eſtate the ſaid principal ſum of *l.* as he has declared, I do hereby forgive him the ſum of *l.* part thereof;

thereof; I give to my ſaid daughter
l. and to my daughter *l.*
and to my ſaid daughter *l.* to
my ſon *l.* over and above
what I have before given; alſo I give to
the ſum of *l.* in conſideration of the charge and trouble he will have in the execution of the truſts of this my will in him repoſed. To the poor of the pariſh of aforeſaid the ſum of *l.* to be diſtributed amongſt them at the diſcretion of my executors. Alſo I give to the ſaid and of, *&c.* the ſum of *l.* upon truſt, to be placed out in the purchaſe of new *S. S.* annuities, or other good government or other ſecurities, in their names, and the intereſt and dividends thereof from time to time to be paid to my daughter or her order in writing during her life, for her ſole and ſeparate uſe, excluſive of her huſband; and I will and direct that her receipt or order in writing for the ſame under her hand, from time to time ſhall be a ſufficient diſcharge for the ſame, notwithſtanding her coverture: but if my ſaid daughter ſhall ſurvive her huſband then from and after his deceaſe I give the ſaid *l.* and the ſtocks or ſecurities in which the ſame ſhall be inveſted, to my ſaid daughter for her own uſe and benefit, and to be at her own diſpoſal; and I direct the ſame to be paid, aſſigned or transferred to her accordingly: but in caſe my ſaid daughter ſhall
happen

happen to die in the lifetime of her ſaid huſband, then and in ſuch caſe I do give and bequeath the ſaid *l.* or the ſtocks or ſecurities in which the ſame ſhall be inveſted, from and after the deceaſe of my ſaid daughter unto if he ſhall be then living, and when he ſhall attain his age of twenty-one years, and until his attaining that age or death, which ſhall firſt happen, the dividends, intereſt and profits thereof, to be applied for his maintenance and education: but if my ſaid daughter ſhall die in the lifetime of her ſaid huſband, and the ſaid ſhall be dead at the time of her deceaſe, or ſhall die afterwards before his attaining his age of twenty-one years, then and in ſuch caſe, from and after the death of my ſaid daughter and of the ſaid which ſhall laſt happen, I give and bequeath the ſaid *l.* and the ſtocks or ſecurities in which the ſame ſhall be inveſted, unto ſuch child or children of my ſaid daughter and the ſaid and ſhall attain the age or ages of ſixteen years reſpectively; and in caſe of no ſuch ſurviving child or children, or who ſhall live to attain that age, then I give and bequeath the ſaid *l.* or the ſtocks or ſecurities in which the ſame ſhall be inveſted, and the dividends, intereſt and profit thereof, from and after the deceaſe of the ſurvivor of them my ſaid daughter the ſaid and of ſuch ſurviving child or children, if any, dying before

fore the age of ſixteen years, unto ſuch child and children of my ſaid ſon as ſhall be then living, equally to be divided between them, if more than one, ſhare or ſhares alike. Alſo I give to my grandaughters and children of my daughter the ſum of *l.* a-piece, to be paid them reſpectively at their reſpective ages of twenty-one years, or days of marriage, which ſhall firſt happen; and in the mean time I direct that the ſaid two ſums of *l.* be placed out at intereſt in the purchaſe of new *S. S.* annuities, in the names of my executors, and that the dividends and produce thereof to be applied from time to time for my ſaid grandaughters maintenance and education (as my ſaid executors ſhall think fit) until their reſpective ages of twenty-one years, or marriage, which ſhall firſt happen; and if either of my ſaid two grandaughters ſhall be before ſuch age in the lifetime of my ſaid daughter then I give the ſhare of ſuch of them as ſhall ſo die, equally to be divided between the ſurvivor of them and my ſaid daughter but if my ſaid daughter ſhall be then dead, then I give the whole to the ſurvivor of my ſaid grandaughters; but if both of my ſaid grandaughters ſhall happen to die before attaining the age of twenty-one years, or marriage, then I give and bequeath the whole of the ſaid ſeveral ſums of *l.* and *l.* and the ſtocks or ſecurities in which the ſame ſhall be inveſted,

veſted unto my ſaid daughter
in caſe he ſhall be then living, for her own uſe and benefit. Alſo my will is, that my plate, watch, jewels, books and houſehold goods, ſhall be diſtributed and diſpoſed of according to ſuch directions as I ſhall leave in a paper written with my own hand, and incloſed in, or annexed to this my will; alſo I appoint and direct that all my wearing apparel (except what may be otherwiſe diſpoſed of by me in the ſaid paper writing) be delivered over to my daughter
for her ſole and ſeparate uſe. And I do hereby declare my mind and will to be, that if any of my children, or any of the huſbands of any of my daughters, or any other perſon or perſons intitled to any legacy or legacies by this my will, or to any intereſt therein, or in the premiſſes, ſhall in any manner controvert any of the gifts, deviſes, diſpoſitions or appointments herein by me made, or ſhall refuſe to ſtand or abide by the ſame, or ſhall refuſe or neglect to do or execute any reaſonable or proper act for confirming, eſtabliſhing or carrying into execution the ſame, being thereunto requeſted, then that ſuch perſon or perſons who, or whoſe huſband controvert any of the gifts, deviſes, diſpoſitions or appointments by me herein before made, or who ſhall refuſe to abide by the ſame, or ſhall refuſe or neglect to confirm the ſame, upon requeſt as aforeſaid, his, her and their reſpective wives and children ſhall be deprived of, and loſe

all

all benefit and advantage (ſave and except only as to his, her or their reſpective ſhares of and in the ſaid half an acre of land by me deviſed and appointed as aforeſaid) of whatever is in or by this my will, or any part thereof, given or appointed to, or in truſt for them reſpectively, or for their reſpective uſe or benefit; and the ſame (except as aforeſaid) ſhall be divided amongſt my other children who ſhall conſent and agree to this my will, in proportion to what is herein before appointed to ſuch of them reſpectively as aforeſaid. *Item*, I deſire to be buried in the pariſh church of as near the remains of my late huſband as conveniently can be; alſo I give, deviſe and bequeath all the reſt, reſidue and remainder of all my eſtate and effects, real or perſonal, whatſoever and whereſoever, not herein before otherwiſe effectually diſpoſed of, after payment of my debts, legacies, and funeral expences, to my ſaid ſon

I do hereby make, ordain, conſtitute and appoint Executors of this my laſt will and teſtament, hereby revoking all former wills by me at any time heretofore made, and do declare this to be my laſt will and teſtament. In witneſs whereof I the ſaid the teſtatrix, have to this my laſt will and teſtament, contained in this and the preceding ſkins of parchment, ſet my hand and ſeal (to wit) my hand to the bottom of each of the ſaid ſkins, and my hand

hand and ſeal to this laſt ſkin, and my ſeal at the foil of the top of the ſaid ſkins, where all the ſkins are fixed together, this
day of 1755.

The writing contained in this and the preceding ſkins was ſigned and ſealed by the above named and by her publiſhed and declared as and for her laſt will and teſtament, in the preſence of us who have hereto ſubſcribed our names in her preſence, and in the preſence of each other.

THIS is the laſt will and teſtament of me *A. B.* of, *&c.* Firſt, I will that all ſuch debts as I ſhall juſtly owe at the time of my deceaſe, and my funeral charges and expences, be in the firſt place paid by my executors herein after named. *Item*, I give, deviſe and bequeath unto *C. D.* of, *&c.* all and every my meſſuages, lands, tenements and hereditaments, and premiſſes, whereof I am ſeiſed in fee, ſituate, lying and being in in the county of and now or late in the ſeveral tenures or occupations of and or one of them, their, or one of their aſſigns, leſſees or undertenants; to have and to hold all and every the ſaid meſſuages, *&c.* unto and to the uſe of the ſaid *C. D.* and his heirs for ever. *Item*, I give, deviſe and bequeath unto of in the county of all my copyhold meſſuages, lands, tenements and hereditaments, (and which I have lately ſurrendered to the uſe of my will) ſituate, lying and being in the ſaid county, and which now are or late were in the ſeveral tenures or occupations of and or one of them, their or one of their aſſigns, leſſees or undertenants; to have and to hold all and every the ſaid laſt mentioned meſſuages, lands, tenements, hereditaments and premiſſes, with their and every of their appurtenances, unto and to the uſe of the ſaid

and

and the heirs of his body lawfully to be begotten; and for default of ſuch heirs, then to the right heirs of me the ſaid *A. B.* for ever. *Item*, I give, deviſe and bequeath unto of in the county of Eſq; all thoſe my meſſuages or tenements with their and every of their appurtenances, now in the ſeveral tenures or occupations of and or their ſeveral leſſees, undertenants or aſſigns, ſituate, ſtanding and being in the pariſh of in the county of and all that my other meſſuage or tenement with the appurtenances, ſituate, ſtanding and being in the ſaid pariſh of and near or adjoining to the ſaid two laſt mentioned meſſuages or tenements, and now called, or commonly known by the name or ſign of the and heretofore in the tenure or occupation of his undertenants or aſſigns, but is now untenanted; and all that little building, meſſuage or tenement heretofore in the tenure or occupation of ſituate, ſtanding and being in the yard or backſide, and heretofore belonging to, or lett with the ſaid laſt herein before deviſed meſſuage, and alſo all other my meſſuages or tenements, ground and hereditaments in aforeſaid with their appurtenances; to have and to hold all and every the ſaid laſt mentioned meſſuages or tenements and premiſſes, with their appurtenances (ſubject nevertheleſs to, and charged and chargeable with the annuity, yearly rent or ſum of

of *l.* herein after-mentioned) unto him the ſaid and his aſſigns, for and during the term of his natural life: and from and immediately after his deceaſe I give, deviſe and bequeath all and every the ſame meſſuages or tenements and premiſſes, with their and every of their appurtenances (ſubject to and charged and chargeable with the annuity hereinafter-mentioned (unto and to the uſe of in the county of and the heirs of his body lawfully begotten, or to be begotten; and for default of ſuch heirs, then to my own right heirs for ever; and I do hereby give, deviſe and bequeath unto wife of and her aſſigns, for and during the term of her natural life, one annuity or clear yearly rent or ſum of *l.* of lawful money of *Great Britain*, free of taxes and all other deductions, parliamentary or otherwiſe, to be iſſuing and payable out of all and every the ſaid laſt mentioned meſſuages and tenements and premiſſes, and to be paid and payable by equal half-yearly payments, at the two moſt uſual feaſts or days of payment in the year, that is to ſay, the feaſt of the Annunciation of the bleſſed Virgin *Mary*, and Saint *Michael* the archangel; the firſt payment thereof to be on ſuch of the ſame feaſts as ſhall firſt and next happen after my deceaſe; and I do hereby charge and ſubject all and every the ſame meſſuages or tenements and premiſſes, to and with the payment of the ſaid annuity, yearly rent or

or ſum of *l.* accordingly. And my will is, that in caſe the ſaid annuity, yearly rent or ſum of *l.* or any part thereof, ſhall be behind or unpaid by the ſpace of twenty-eight days next over or after either of the aforeſaid feaſts whereon the ſame is herein before directed to be paid as aforeſaid, that then and ſo often it ſhall and may be lawful for the ſaid (the annuitant) and her aſſigns, to enter upon all and every or any part of the ſaid premiſſes charged with the ſaid annuity as aforeſaid, and diſtrain for the ſame, or for ſo much thereof as ſhall be ſo in arrear, and all coſts and charges occaſioned by non-payment thereof. *Item*, I give, deviſe and bequeath unto of in the county of all that my meſſuage or tenement (being part freehold and part leaſehold) with the appurtenances, ſituate, ſtanding and being in in the pariſh of and now or late in the poſſeſſion or occupation of his undertenants or aſſigns; and alſo all that my freehold piece or parcel of ground lying and being in or near an open field, commonly called or known by the name of the *Town Field*, in the pariſh of and now or late in leaſe to and all thoſe meſſuages, tenements, erections and buildings thereupon, or upon any part thereof now erected and built, and erecting and building, with their and every of their reſpective appurtenances; to have and to hold the ſaid meſ-

ſuages or tenements, and piece or parcel of ground and premiſſes laſt above before deviſed, with their and every of their reſpective appurtenances, unto the ſaid and her aſſigns, for and during the term of her natural life, (ſhe and they keeping the ſame in good repair) and from and immediately after her deceaſe, I give, deviſe and bequeath the ſame meſſuages or tenements, pieces or parcels of ground and premiſſes, with their and every of their reſpective appurtenances, unto the ſaid and the heirs of his body lawfully to be begotten; and for default of ſuch heirs, then to my own right heirs for ever. *Item*, I give, deviſe and bequeath unto the ſaid all that my meſſuage or tenement, with appurtenances in which I hold by or under a leaſe from and his wife (both deceaſed) or one of them; and all my eſtate, right, title, term and intereſt of and in the ſame premiſſes, with the appurtenances; to have and to hold unto the ſaid his executors, adminiſtrators and aſſigns, to and for his and their own uſe and benefit. *Item*, I give and bequeath unto of, *&c.* the ſum of *l.* of lawful money of *Great Britain*, to be paid within three calendar months next after my deceaſe. *Item*, I give and bequeath unto *l.* for to buy him mourning. (Here the teſtator gave ſeveral other legacies). All the ſaid laſt-mentioned legacies I will and direct to be paid within one calendar month next after my deceaſe. *Item*, I give and

and bequeath the ſum of *l.* of like money unto the managers of the preſbyterian fund in to be diſpoſed of as they ſhall think fit, and the receipt of the treaſurer for the ſame fund for the time being to be a ſufficient diſcharge to my executors for the ſame; and I give and bequeath the ſum *l.* of like money unto the managers and truſtees of the charity ſchool in for the uſe and benefit of the ſaid charity ſchool, and I will that the receipt of two or three ſuch managers or truſtees ſhall be a ſufficient diſcharge to my executors for the ſame. *Item*, I give and bequeath the ſum of *l.* of like money to and for the benefit of the poor members of the ſociety or congregation of proteſtant diſſenters in (whereof my late father was miniſter or paſtor) to be diſtributed in ſuch manner and proportions, and to ſuch objects, as my executors herein after named, or the ſurvivor of them, ſhall think fit. *Item*, I give and bequeath the ſum of *l.* of like money unto of, *&c.* and of, *&c.* their executors and adminiſtrators, upon the ſeveral truſts, and to and for the ſeveral purpoſes herein after mentioned and directed of and concerning the ſame, (that is to ſay) upon truſt that the ſaid and (the truſtees) and the ſurvivor of them, his executors or adminiſtrators, ſhall and do in his or their own names, or in the names of him or themſelves, and of ſuch

other perſon or perſons as he or they ſhall think fit, from time to time put and place out the ſaid ſum of *l.* upon ſome publick or private ſecurity or ſecurities at intereſt, or lay out and inveſt the ſame in the purchaſe of ſtock in ſome of the publick funds, or of *South Sea* annuities, or otherwiſe employ and improve the ſame *l.* in ſuch a manner as they my ſaid truſtees, or the ſurvivor of them, ſhall in his or their diſcretion or diſcretions think fit, and ſhall and do pay, apply and diſpoſe of the clear yearly dividends, intereſt and produce thereof, as the ſame ſhall from time to time ariſe and be received (over and above what ſhall be ſufficient to anſwer and pay the coſts and charges attending of the execution of the truſts by me hereby directed concerning the ſame *l.*) unto and for the uſe and benefit of the miniſter or paſtor for the time being, of the ſaid ſociety or congregation of proteſtant diſſenters in for ſo long time as the ſaid ſociety or congregation ſhall ſubſiſt as a religious ſociety of proteſtant diſſenters, and continue to meet and aſſemble together for the worſhip of God in their preſent place of religious worſhip, or elſewhere in aforeſaid, or the neighbourhood thereof. Provided nevertheleſs, and my will and mind is, and I do hereby expreſsly will, declare and direct, that in caſe at any time hereafter the ſaid ſociety or congregation ſhall be diſſolved and broke up, or that the laws

laws and ſtatutes of this realm ſhall diſallow and prohibit the ſame ſociety or congregation from meeting together for religious worſhip, as proteſtant diſſenters are now by law tolerated to do, then and in either of the ſaid caſes, and when and as ſoon as the ſame or either of them ſhall happen, the ſaid ſum of *l.* and all the intereſt and produce from thenceforth to ariſe and be received, ſhall ſink and fall-back into the reſiduum of my perſonal eſtate by me herein after given and bequeathed, and ſhall be, go and remain to and for the uſe and benefit of ſuch perſon or perſons, who for the time being ſhould or would have been intitled unto ſuch reſiduum by virtue of, and under this my will. *Item*, I give and bequeath all my rings whatſoever, and ſuch pieces of my plate as are marked with my own name and arms, and my houſehold goods and furniture, and my wearing apparel, unto the ſaid and all my ſtudy of books, and all other my plate (not herein before bequeathed) and all my ready money and ſecurities for money, arrears of rent, debts to be owing, and all my ſtocks in any of the publick companies or funds, and all other my goods, chattels and perſonal eſtate whatſoever (not herein before by me otherwiſe bequeathed or diſpoſed of). I alſo give and bequeath unto of, *&c.* to and for his own uſe and benefit; and I do hereby make, ordain, conſtitute and appoint and executors of this my laſt will

and

and teſtament; and I give and bequeath unto the ſaid the ſum of *l*, for his care and trouble as one of my executors and truſtees. *Item*, I do hereby authoriſe, impower and direct my ſaid executors, and the ſurvivor of them, his executors and adminiſtrators in the mean time, from and after my deceaſe, until the ſaid ſhall attain his age of twenty-one years, to manage and improve the eſtate and fortune of him the ſaid by me hereby given him for his uſe and benefit, and to leaſe all or any part of his freehold, copyhold or leaſehold eſtates, and to lend and place out upon ſecurity or ſecurities at intereſt, or to lay out in the publick companies or funds, or otherwiſe improve according to his or their diſcretion or diſcretions, all or any part of the monies belonging or ariſing from the ſaid eſtates and fortune of the ſaid and to pay unto and account with him the ſaid for all ſuch rents, intereſts, produce and improvements, as ſhall ariſe from or be made of, and produced by the ſaid eſtates, monies and fortune hereby given, deviſed and bequeathed to him, when he ſhall attain his age of twenty-one years. And my will is, and I do hereby, expreſsly declare, that my ſaid executors and truſtees, or either of them, their or either of their executors or adminiſtrators, ſhall not be charged or chargeable with or accountable for more of the aforeſaid

ſaid monies and eſtates, than he or they ſhall actually receive, or ſhall come to his or their reſpective hands by virtue of this my will, nor with or for any loſs which ſhall happen of the ſaid monies and eſtate hereby by me given to the ſaid or of the aforeſaid ſum of *l.* or in any part thereof, ſo as ſuch loſs happen without their wilful default and neglect; nor the one of them for the other of them, or for the acts, deeds, receipts, defaults or diſburſements the one or the other; and alſo that it ſhall and may be lawful for them my ſaid executors, and each of them, their and each of their executors and adminiſtrators, in the firſt place, by and out of the ſaid premiſſes hereby deviſed to the ſaid reſpectively to deduct and reimburſe him and themſelves reſpectively, all ſuch loſs, coſts, charges and expences, as he or they, or any of them, ſhall ſuſtain, expend, or be put unto, for or by reaſon of the performance of this my will, or the truſts hereby in them repoſed, or the management and execution thereof reſpectively, or any other thing in anywiſe relating thereunto; and laſtly, I do hereby revoke, *&c.* In witneſs, *&c.*

THIS

THIS is the laſt will and teſtament of me *A. B.* of
of which will I have cauſed two parts to be written, both of the ſame tenor, words and form as this. Firſt, I deſire that my body may be interred in the moſt private manner, at the diſcretion of my executor herein after named; and whereas my daughter
wife of had only *l.* at her marriage; but I have lately paid and given to the ſaid the further ſum of *l.* and have alſo covenanted and agreed to give or leave to them the ſaid
and his wife, or the ſurvivor of them, or their children or iſſue, or other repreſentative, either in my lifetime, or in and by my laſt will and teſtament, at the time of my deceaſe, the further ſum of *l.* which they the ſaid and his wife, have covenanted and agreed to accept in full for the advancement and preferment of her the ſaid
out of all ſuch part and ſhare as they or either of them can or may, or could or might claim or pretend to, of, in, or out of all or any part of my perſonal eſtate, by virtue of the cuſtom of the city of *London*, or otherwiſe (except ſuch part thereof as I ſhould or might freely and voluntarily give or leave to them or either of them by my laſt will and teſtament, or otherwiſe): Now therefore I do hereby give and bequeath the ſum of *l.* of lawful money of *Great Britain*,

to

to be paid by my executor herein after named within three calendar months next after my deceaſe unto the ſaid and his wife, or the ſurvivor of them, or to ſuch other perſon or perſons, as for the time being ſhall be intitled to receive the ſame, according to the true intent and meaning of my ſaid covenant and agreement in that behalf entered into by me, and in full ſatisfaction and diſcharge of and for the ſame covenant and agreement. *Item*, I give and bequeath unto ſuch perſons whoſe names ſhall at the time of my deceaſe be found expreſſed or contained in any liſt, note or other writing written or ſigned by me, the ſeveral and reſpective ſum and ſums of money which ſhall be therein ſet down, mentioned or expreſſed to be by me given to them reſpectively. *Item*, I give and bequeath unto my nephew of, *&c.* in the county of and Mr. brother of the ſaid and to their heirs and aſſigns, for and during the natural life of my ſaid daughter an annuity or yearly rent charge of *l.* of like money, to be yearly and every year iſſuing and payable out of all my manors, meſſuages, *&c.* in the county of upon truſt nevertheleſs, that the ſaid and ſhall and do pay, apply and diſpoſe of the ſaid annuity or yearly rent-charge of *l.* unto ſuch perſon and perſons, and for ſuch uſes and purpoſes as ſhe the ſaid ſhall from time to time, notwithſtanding her

her coverture, by any note or notes in writing under her hand direct or appoint, to the intent that the ſame may not be at the diſpoſal of, or ſubject or liable to the controul, debts, forfeitures or engagements of her preſent or any after taken huſband, but only at her own ſole and ſeparate diſpoſal, and for her own ſole and ſeparate uſe and benefit. (The like to two other daughters. And then the teſtator goes on, and ſays) And it is my will and deſire that the aforeſaid annuity ſhall be paid to my ſaid daughter by two equal half-yearly payments, on the two moſt uſual feaſts or days of payment in the year (that is to ſay) the feaſts of St. *Michael* the Archangel and the Annunciation of the bleſſed Virgin *Mary* in every year; the firſt of the ſaid half-yearly payments to begin and be made on ſuch of the ſaid feaſts as ſhall firſt happen next after my deceaſe: and my further will is, that it ſhall and may be lawful to and for my ſaid truſtees, their heirs and aſſigns, from time to time, in caſe of non-payment of the ſaid annuities, or any of them, or any part of them, to raiſe the ſame by diſtreſs upon all or any part of the premiſſes charged therewith, together with the coſts and charges of ſuch diſtreſs. And whereas I have already ſufficiently provided for my ſaid daughters and at the time of their reſpective marriages with their now huſbands, and for which I have all their diſcharges; and have now likewiſe ſufficiently provided for my ſaid daughter

in

in manner aforeſaid; yet nevertheleſs, as a further proviſion for my ſaid three daughters, for their ſeparate uſe (over and above the ſeveral annuities herein before given for their benefit, for their reſpective lives as aforeſaid) I do hereby give and bequeath unto the ſaid and their executors and adminiſtrators *l.* capital ſtock in the united *Eaſt-India* company, upon the truſts herein after-mentioned concerning the ſame (that is to ſay) As to one full third part thereof, upon truſt, that they my ſaid truſtees, their executors or adminiſtrators, ſhall and do pay, apply and diſpoſe of the yearly dividends, intereſt and produce thereof, as the ſame ſhall from time to time (during the natural life of my ſaid daughter) ariſe or be received, unto the proper hands of her my ſaid daughter or otherwiſe to permit and ſuffer her my ſaid daughter to receive the ſame to and for her own ſole and ſeparate uſe and benefit, to the intent that the ſame may not be at the diſpoſal of, or ſubject or liable to the controul, debts or engagements of her preſent or any after-taken huſband, but only at her own ſole and ſeparate diſpoſal, and upon further truſt that they my ſaid truſtees, their executors or adminiſtrators, ſhall and do, from and after the deceaſe of my ſaid daughter transfer and diſpoſe of the ſaid third part of the ſaid *l.* ſtock unto all and every, or ſuch one or more of the children or grand-

grandchildren of her the ſaid which ſhall be then living, in ſuch parts, ſhares and proportions, manner and form, as ſhe notwithſtanding her coverture, or whether ſhe ſhall be ſole or married, by her laſt will and teſtament in writing, or any writing purporting to be her laſt will and teſtament, to be by her ſigned, ſealed and publiſhed in the preſence of three or more credible witneſſes, ſhall direct, limit, give or appoint the ſame; and in default thereof, then unto and amongſt all and every the children of her the ſaid which ſhall be living at the time of her deceaſe, equally to be divided between them (if more than one) ſhare and ſhare alike, and the child or children of ſuch of them as ſhall be then dead, in manner aforeſaid, and ſuch child or children to have his, her or their father's or mother's ſhare only, Provided always nevertheleſs, that in caſe my ſaid daughter ſhall have no ſuch children or grandchildren living at the time of her deceaſe, then my ſaid truſtees, their executors or adminiſtrators, ſhall aſſign and transfer the ſaid third part of the ſaid *l.* ſtock unto his executors and adminiſtrators, to and for his and their own uſe and beneſit; and as to one other third part of the ſaid *l.* capital ſtock, upon truſt, that they my ſaid truſtees, their executors or adminiſtrators, ſhall and do pay, apply and diſpoſe of the yearly dividends, intereſt and produce thereof, as the ſame ſhall from time

time to time (during the life of my ſaid daughter (another daughter) ariſe or be received, unto the proper hands of her the ſaid or otherwiſe, *&c.* (as before.) And as to the remaining third part of the ſaid *l.* ſtock, upon truſt, *&c.* (for another daughter's benefit, as before). And my will is, that the reſpective receipts of my ſaid ſeveral daughters alone, under their reſpective hands, as well for their ſaid ſeveral and reſpective annuities or rent-charges, as for their ſeveral parts and ſhares of the yearly dividends, intereſt and produce of the ſaid *Eaſt-India* ſtock, ſhall from time to time, notwithſtanding their reſpective covertures, be good and ſufficient diſcharges to the perſon or perſons paying the ſame annuities and dividends, intereſt or produce, for ſo much thereof for which ſuch receipts ſhall reſpectively be given. Provided always, and my will is, that my ſaid three daughters and their reſpective huſbands ſhall (in caſe my executor requires it) give him, within two calander months next after my deceaſe, a further and ſufficient releaſe and diſcharge from all their reſpective further claims and demands whatſoever out of my ſaid eſtate, by virtue of the ſaid cuſtom of the ſaid city of *London*, or otherwiſe; and in caſe of their neglect or refuſal ſo to do, then all and every of the gifts, deviſes, annuities, legacies and appointments by this my will made or given to or for the benefit of them, or ſuch of them ſo

neglecting or refuſing, ſhall ceaſe and be void, for the benefit of my executor, his executors and adminiſtrators. And in caſe the ſaid *Eaſt-India* ſtock, or any part thereof, ſhall be redeemed or paid off, then my will is, that my ſaid truſtees, their executors or adminiſtrators, ſhall and do lay out the monies to be received for and in lieu of the ſtock ſo redeemed or paid off, in ſuch ſtocks, funds, or other publick or private ſecurities, as my ſaid three daughters ſhall reſpectively agree to; and that the monies ſo received and laid out ſhall be ſubject to the ſame truſts, and for the ſame or the like intents and purpoſes as are herein before declared, of and concerning my ſaid daughters their reſpective ſhares of and in the ſaid *l.* *Eaſt-India* ſtock. *Item*, I do hereby direct and appoint, that my executor do with all convenient ſpeed after my deceaſe, out of my perſonal eſtate, lay out the ſum of *l.* in the purchaſe of freehold lands or hereditaments of inheritance in fee-ſimple in *England*, and convey and ſettle, or procure the ſame to be conveyed and ſettled, unto and upon the churchwardens and overſeers of the pariſh of in the town of in the county of for the time being, and their ſucceſſors for ever, upon the truſts, and for the purpoſes herein after-mentioned (that is to ſay) upon truſt, that the yearly rents and profits of the premiſſes ſo to be purchaſed ſhall yearly and every year be laid out and diſpoſed of by the churchwardens and overſeers for the time being

being of the ſaid town of for the placing out one or more poor boy or poor boys born or to be born in the ſaid town, and pariſh of aforeſaid to be an apprentice or apprentices to ſome handicraft trade, or a mariner or mariners, and that the children of ſuch perſons of the ſaid town and pariſh, who have been very induſtrious in their callings or way of living, for the ſupport and maintenance of their families, and have not been in the poor's rate, ſhall have the preference to all others. Provided nevertheleſs, that in caſe the monument erected in the pariſh church of aforeſaid by my brothers and myſelf, to perpetuate (as much as in us lay) the memory of our dear parents, ſhall at any time want repairing, or the gilt letters upon the ſame ſhall be defaced, and become not legible, then and ſo often as the ſame ſhall happen, it is my will, that ſo much money be from time to time taken out of the rents and profits of the lands and hereditaments ſo to be purchaſed, as ſhall be ſufficient to repair the ſaid monument, and make the ſaid gilt letters thereon legible, and from time to time to maintain and preſerve the ſame in ſuch condition; and in ſuch years wherein ſuch repairs ſhall be made, only the overplus of the ſaid rents (above what ſhall be ſufficient for ſuch repairs) ſhall be employed towards placing out ſuch poor boy or poor boys in manner aforeſaid. Provided alſo, and upon this condition nevertheleſs, that in

caſe the ſaid monument ſhall not from time to time be repaired and preſerved in manner aforeſaid, then from and after default of ſuch reparation and preſervation, the lands and hereditaments to be purchaſed as aforeſaid ſhall veſt in, and remain and come to my own right heirs, and the eſtate and intereſt of the ſaid churchwardens and overſeers for the time being in the ſame premiſſes, ſhall from thenceforth ceaſe and be utterly void. And whereas my brother late of merchant, deceaſed, did (among other things) by his will give to me the ſum of *l.* to be by me given away, diſtributed, divided and diſpoſed of amongſt ſuch of my children or other relations, in ſuch ſort and manner, and in ſuch ſhares and at ſuch times, as I ſhould think fit; now my will is, and I do hereby direct that the ſaid ſum of *l.* ſhall be diſtributed, divided and diſpoſed of by my executor herein after-named, within ſix months after my deceaſe, to and amongſt ſuch of my children, and in ſuch proportions and manner, as herein after-mentioned and expreſſed, (that is to ſay) To my ſaid daughter the ſum of *l.* (part thereof) to my ſaid daughter the like ſum of *l.* (other part thereof) to my ſaid daughter the like ſum of *l.* (other part thereof) and all the reſidue of the ſame *l.* to my daughter *Item*, I give, deviſe and bequeath all and every my manors, *&c.* in

in the county of or elſewhere within the realm of *England*, as well freehold, as copyhold and leaſehold for lives, with their and every of their appurtenances, unto and to the uſe and behoof of my ſon his heirs and aſſigns for ever, ſubject nevertheleſs as to my ſaid eſtate in the ſaid county of to the aforeſaid annuities or yearly rent-charges by me herein before given thereout, or charged thereon, in truſt, and for the benefit of my daughters, for their reſpective lives as aforeſaid, or ſuch of them as ſhall be ſubſiſting. [*Makes reſiduary legatee*, &c.] In witneſs, *&c.*

WHEREAS I *A. B.* of, *&c.* have made my laſt will and teſtament in writing, bearing date the in the year of our Lord 1755, and have thereby ordained, conſtituted and appointed *A. B.* of, *&c.* and *C. D.* of *&c.* executors of my ſaid will; and I do by this my writing (which I declare to be a codicil to my ſaid will, and direct to be taken as a part thereof) will and direct that the ſaid *A. B.* ſhall not be an executor of my ſaid will, but that in his room and ſtead of ſhall be one of the executors of my ſaid will jointly and together with the ſaid *C. D.* and I do hereby accordingly make, ordain,

ordain, conſtitute and appoint them the ſaid *C. D.* and joint executors of my ſaid will, as fully and effectually to all intents and purpoſes, and in all reſpects, as if they only and no other perſon or perſons had been by me originally in my ſaid will conſtituted and appointed executors thereof. I hereby revoke and make void the legacy of *l.* in and by my ſaid will given to my late ſervant (ſhe being ſince deceaſed); and I do hereby ratify and confirm my ſaid will and all the gifts, deviſes, bequeaths, matters and things therein contained, and not hereby altered and revoked. In witneſs whereof I the ſaid *A. B.* the teſtator, have hereunto ſet my hand and ſeal this day of *January* in the year of the reign of king *George* the ſecond, and the year of our Lord 1755.

THIS

THIS is the laſt will and teſtament of me *A. B.* wife of *C. D.* of, *&c.* Eſq; Whereas in and by a certain indenture of three parts bearing date on or about the day of and made or mentioned to be made between the ſaid *C. D.* of the firſt part, me the ſaid *A. B.* by my then name of of the ſecond part, and *E. F.* of, *&c.* merchant, and *G. H.* of, *&c.* of the third part, and made previous to, and in order to my marriage with the ſaid *C. D.* my now huſband, divers leaſehold meſſuages, *&c.* bank ſtock and *Eaſt-India* bonds of me the ſaid *A. B.* are thereby aſſigned and transferred unto the ſaid *E. F.* and *G. H.* their executors, adminiſtrators and aſſigns, in manner therein expreſſed, in truſt nevertheleſs, for the ſole and ſeparate uſe and benefit of me the ſaid *A. B.* and with full and abſolute power for me from time to time, notwithſtanding my coverture, and whether I ſhould be ſole or married, by any writing or writings under my hand and ſeal, atteſted by two or more credible witneſſes, or by my laſt will and teſtament in writing, or any writing or writings purporting to be my laſt will and teſtament, to be by me ſigned, ſealed, and publiſhed and declared in the preſence of the like number of witneſſes, to diſpoſe of the ſaid leaſehold meſſuages, *&c.* bank ſtock and *Eaſt-India* bonds, or any part thereof, to ſuch perſon or perſons, and in ſuch proportions and manner as I ſhould think fit, as in and by

by the ſaid indenture, relation being thereunto had, will more fully appear. Now in teſtimony of the ſincere love and affection which I have and juſtly bear towards the ſaid *C. D.* my moſt dear and indulgent huſband, and by virtue of the power and powers, authority and authorities, to me reſerved and given in and by the ſaid in part recited indenture, and of all other power and powers, authority and authorities, anywiſe enabling me thereunto, I the ſaid *A. B.* do by this my laſt will and teſtament, or writing purporting to be my laſt will and teſtament, to be duly ſigned, ſealed, publiſhed and declared in the preſence of the perſons whoſe names are here-under written, as witneſſes thereto, give, deviſe, bequeath, direct, limit and appoint all and every the ſaid leaſehold meſſuages or tenements, bank ſtock, *Eaſt-India* bonds, and all other my meſſuages, *&c.* ſtocks, bonds, goods, chattels, monies and eſtate whatſoever and whereſoever, and of what nature or kind ſoever, whereunto I am intitled at law or in equity, or whereof I have any power to diſpoſe, and all my eſtate and intereſt therein, unto my ſaid huſband, the ſaid *C. D.* (who I think is moſt deſerving thereof) his heirs, executors, adminiſtrators and aſſigns reſpectively, to and for his and their own uſe and benefit abſolutely; and I do hereby direct my ſaid truſtees in the ſaid recited indenture mentioned, to convey, aſſign and tranſfer over the ſame and every part thereof to him and them accordingly;

ingly; yet nevertheleſs my mind and will is, and I do hereby deſire and requeſt my ſaid huſband to give (out of what I have herein before bequeathed to him) unto his daughter by his former wife (in caſe he ſhall think fit, and in his judgment ſhe ſhall prove deſerving of the ſame) the ſum of *l.* of lawful money of *Great Britain*, to be paid to her at ſuch time or times, and in ſuch manner or proportions, and under ſuch reſtrictions in all reſpects, as he ſhall direct, and think may be moſt for her benefit. And I do hereby conſtitute and appoint my ſaid huſband *C. D.* ſole executor of this my laſt will and teſtament; and I earneſtly deſire of him that I may be buried where he himſelf intends to be buried, and that he would give proper directions in his will for that purpoſe, in caſe he ſhould ſurvive me; and laſtly I do hereby revoke, *&c.* In witneſs, *&c.*

Signed, *&c.*

THIS

THIS is the laſt will and teſtament of me *A. B* of, &c. Firſt, I deſire to be decently and privately buried in the church or church-yard belonging to the pariſh in which I ſhall happen to die, without any funeral pomp, and with as little expence as may be; and I give and bequeath unto the poor which receive alms of that pariſh in which I ſhall happen to die, the ſum of *l.* to be diſtributed in ſuch proportions and manner as my executrix herein after named ſhall think fit; alſo I give and bequeath unto ſuch of my children of my late ſiſter as ſhall be living at the time of my deceaſe, the ſum of *l.* of lawful money of *Great Britain*, to be equally divided between them ſhare and ſhare alike, and to be paid to them at their reſpective ages of twenty-one years, or days of marriage, which ſhall firſt happen, and in caſe any of them ſhall happen to die before the age of twenty-one years, or marriage, then I give and bequeath the ſhare or ſhares of her or them ſo dying to the ſurvivors of them, to be equally divided between them, payable as aforeſaid; but if only one of my ſaid ſiſter's children ſhall live to attain the age of twenty-one years, or be married, then to ſuch ſurvivor. Alſo I give to my ſervant the ſum of *l.* of like lawful money, and all my wearing apparel, in caſe ſhe ſhall be living with me at the time of my deceaſe, but not otherwiſe. *Item*, I give

give and bequeath all my third part, ſhare and intereſt of and in the family pictures which were my late mother's, unto my ſiſters and for their lives, and the life of the ſurvivor of them, and after the death of the ſurvivor of them I give and bequeath my ſaid part and ſhare of the ſaid pictures unto the eldeſt ſon of my late ſiſter which ſhall be then living, and I deſire that he would never ſell or diſpoſe of any of them, but that they may always remain and continue in the family; alſo all the reſt and reſidue of my goods, chattels and eſtate whatſoever and whereſoever, or of what nature, kind or quality ſoever (after payment of my juſt debts, legacies and funeral expences) I give and bequeath the ſame and every part thereof unto my ſaid ſiſter whom I do hereby make, *&c.* ſole executrix of this my laſt will and teſtament; and I do hereby revoke, *&c.* In witneſs, *&c.*

THIS

THIS is the laſt will and teſtament of me *A. S.* of widow. Firſt, I will and direct that all my juſt debts and funeral expences be fully paid and ſatisfied; and ſubject thereto and to the payment of the three ſeveral pecuniary legacies of *l.* each, herein after bequeathed, I give, deviſe and bequeath all my goods, chattels, plate, jewels, monies, ſecurities for money, *South-Sea* annuity ſtock, debts, and other perſonal eſtate of what nature or kind ſoever and whereſoever, unto *A. B.* and *C. D.* of and to their executors and adminiſtrators, upon the truſts and for the purpoſes herein after mentioned (that is to ſay) In truſt that they the ſaid *A. B.* and *C. D.* and the ſurvivor of them, and the executors or adminiſtrators of ſuch ſurvivor, do and ſhall, by and out of the intereſt, dividends and produce of my ſaid eſtate and effects, pay and apply the ſum of 50*l.* a-year to and for the maintenance and education of my daughter in ſuch manner as they ſhall think fit, until ſhe attains the age of twenty-one years, or ſhall be married; and upon her attaining that age, or day of marriage, which ſhall firſt happen, to pay, aſſign and ſet over the ſaid truſt, eſtate and effects, and all intereſt and dividends due thereon, and produce thereof, and all ſecurities whereon the ſame ſhall then be placed out or inveſted, to her my ſaid daughter, for her own ſole uſe and benefit abſolutely

lutely for ever: but in caſe my ſaid daughter ſhall happen to die before ſhe attains the age of twenty-one years, and unmarried, then I give 200*l.* part of the ſaid truſt eſtate, to ten poor widows of clergymen of the church of *England*, who are of good life and converſation, and proper objects of charity, to be equally divided amongſt them, ſhare and ſhare alike, at the diſcretion of my ſaid truſtees, or the ſurvivor of them; and all the reſt and reſidue of my ſaid eſtate and effects I will and direct ſhall go to and be enjoyed by my neareſt relations of next of kin, in the ſame manner and proportion as the ſame would paſs and be diſtributable by the ſtatute for diſtribution of inteſtates eſtates. Alſo I give and bequeath to *E. T.* wife of of the ſum of *l.* and to the ſaid *T. D.* and *R. B.* the like ſum of *l.* a-piece: and I do hereby conſtitute and appoint the ſaid *A. B.* and *C. D.* executors of this my laſt will and teſtament, hereby revoking, *&c.* In witneſs whereof, *&c.*

IN

IN the name of God, *Amen.* I *A. B.* of, *&c.* do make my laſt will and teſtament in writing, as follows: Firſt, I will and direct that all my juſt debts be fully paid and ſatisfied; and in caſe my perſonal eſtate ſhall not be ſufficient for that purpoſe, I do hereby ſubject my real eſtate to the payment thereof. And whereas I have by ſeveral grants and conveyances ſettled and aſſured to and upon my ſon for the term of his natural life, all thoſe my manors or lordſhips of and in the county of with the rights, members and appurtenances thereunto reſpectively belonging, and alſo the advowſons, donations or right of preſentation of, in, and to the ſeveral rectories or pariſh churches of and within the ſaid reſpective manors; and alſo all thoſe fee-farm rents iſſuing and payable out of the manors of and in the ſaid county; now I do hereby ratify and confirm the ſaid ſeveral grants and conveyances, and the premiſſes thereby granted and conveyed, unto my ſaid ſon for his life, and from and after the determination of that eſtate, I give and deviſe all and ſingular the ſaid manors, *&c.* unto and their heirs, during the life of my ſaid ſon, upon truſt, to preſerve the contingent remainders thereof herein after limited; and from and after his deceaſe I give and deviſe the ſame manors, *&c.* unto

unto the ſaid truſtees and their heirs, until my grandſon the eldeſt ſon of my ſaid ſon ſhall attain his age of twenty-one years or die, which ſhall firſt happen. In truſt, nevertheleſs, for my ſaid grandſon and his aſſigns, for the term of his natural life; and from and after the determination of that eſtate, unto the ſaid truſtees and their heirs during the life of my ſaid grandſon, upon truſt, to preſerve the contingent remainders thereofherein after limited; and from and after his deceaſe, unto his firſt and every other ſon and ſons ſeverally and ſucceſſively in tail-male, according to priority of birth, and for default of iſſue-male of my ſaid grandſon I give and deviſe the ſame unto all and every other the ſon and ſons of my ſaid ſon lawfully begotten, or to be begotten, ſeverally and ſucceſſively in tail-male, according to priority of birth, and for default of ſuch iſſue unto all and every the daughter and daughters of my ſaid ſon lawfully begotten, or to be begotten, and the heirs of the body and bodies of ſuch daughter and daughters reſpectively, as tenants in common and not as jointenants, and for default of ſuch iſſue to my own right heirs for ever. I give and deviſe unto my ſaid truſtees, and the ſurvivors and ſurvivor of them, and the executors, adminiſtrators and aſſigns of ſuch ſurvivor, my leaſe from the crown of certain lands, *&c.* in in the county of for all ſuch eſtate, term of years therein, as I am,

am, ſhall or may be intitled unto under the crown, upon truſt, to permit and ſuffer my ſon his executors, adminiſtrators and aſſigns, to receive and take the rents, iſſues and profits thereof, until my ſaid grandſon ſhall attain the age of twenty-one years or die, which ſhall firſt happen; and in caſe my ſaid grandſon ſhall attain that age, then and from thenceforth my will is, that the ſaid truſtees, and the ſurvivors and ſurvivor of them, and the executors, adminiſtrators and aſſigns of ſuch ſurvivor, ſhall be poſſeſſed thereof in truſt for my ſaid grandſon for ſo many years of the term and terms therein as he ſhall live, and from and after his deceaſe, in truſt, as to the reſidue thereof, for ſuch perſon as ſhall be the heir-male of his body, but in caſe there ſhall be no ſuch heir, then in truſt for the ſame purpoſes as the reſiduary part of my perſonal eſtate is herein after appointed: provided that every perſon who by virtue hereof ſhall be poſſeſſed of the laſt mentioned premiſſes or any part thereof, or be intitled to the benefit of the ſaid truſt thereof, ſhall have power when ſo poſſeſſed, in conjunction with the ſaid truſtees, or the ſurvivors or ſurvivor of them, or the executors, adminiſtrators or aſſigns of ſuch ſurvivor, to demiſe the ſame or any part thereof for any number of years then to come therein, without taking any fine, or any thing in lieu of a fine, ſo as the beſt rent that can be had for the ſame be reſerved thereupon; and whereas there is one or more ſhort term or

terms

terms of years which may intervene before the commencement of my ſaid leaſe from the crown, my will is, that the ſame term or terms of years be purchaſed by my ſaid truſtees, or the ſurvivor or ſurvivors of them, or by the executors, adminiſtrators or aſſigns of ſuch ſurvivor, by and out of my perſonal eſtate, and that the ſame term or terms when purchaſed, ſhall be enjoyed by the ſame perſon and perſons reſpectively, and for the ſame purpoſes and with the ſame powers, as the ſaid leaſe from the crown are given, limited or appointed: provided always, and I do hereby will and declare, that my ſaid manors, *&c.* herein before given to or in truſt for my ſaid ſon, for his life as aforeſaid, ſhall be charged and chargeable in his hands, and in the hands of any other perſon or perſons, with an annuity or yearly ſum of *l.* which I do hereby give and bequeath unto my wife for her life free and clear of all taxes and deductions whatſoever, to be iſſuing out of the ſaid manors, *&c.* and payable half yearly at and the firſt payment to be made on ſuch of the ſaid feaſt days which ſhall happen next after my deceaſe; and in default of payment of the ſaid annuity or any part thereof, I do hereby impower my ſaid wife and her aſſigns to diſtrain for the ſame upon any part of the ſaid premiſſes; but in caſe my ſaid wife ſhall not within twelve months next after my death, execute and deliver to my ſaid truſtees, ſome or one of them, a good and ſufficient releaſe

of all her right and title of dower of, into or out of my eſtate, then and from thenceforth the ſaid annuity ſhall ceaſe, determine and be utterly void. And whereas I am poſſeſſed of certain hereditaments at in the county of held by one or more leaſe or leaſes for years, I do hereby give and deviſe the ſame unto for ſo many years thereof as he ſhall live, and from and after his deceaſe unto ſuch perſons as ſhall be the heir-male of his body, for the remainder of ſuch term or terms of years as ſhall be then to come therein; and if there ſhall be no ſuch heir, I give the ſame unto my ſaid truſtees and the ſurvivors and ſurvivor of them, and the executors and aſſigns of ſuch ſurvivor, in truſt for the ſame purpoſes as the reſidue of my perſonal eſtate is herein after appointed; and I do hereby will and direct that all the reſidue of my perſonal eſtate, after payment of my debts, legacies and funeral expences, ſhall by my ſaid truſtees or the ſurvivors or ſurvivor of them, the executors or aſſigns of ſuch ſurvivor, be laid out and inveſted in lands of inheritance, and ſettled in like manner, as near as may be, to the ſame uſes as the ſaid manors, *&c.* are herein before limited; but ſubject nevertheleſs to the ſaid annuity of to my wife, and ſuch other annuities, payments and charges, as ſhall be appointed or charged thereupon, by this my will, or any codicil or codicils to be added hereunto; and my will alſo further is, that it

ſhall

ſhall and may be lawful to and for all and every tenant and tenants for life, of all and every or any of the ſaid manors, lands, tenements and hereditaments, when in poſſeſſion, by deed or deeds to grant or demiſe from time to time, ſuch part or parts of the ſame, whereof they ſhall be ſo reſpectively poſſeſſed, as have been uſually granted or leaſed for one, two or three life or lives, or for any number of years determinable upon one, two or three life or lives, ſo as ſuch leaſe or leaſes in poſſeſſion or reverſion exceed not three lives at the moſt, and ſo as the ancient and accuſtomed or uſual rent or rents, and other ſervices, or more, be reſerved thereupon; and alſo to leaſe, all, every, or any part, of the ſaid manors, *&c.* to any perſon or perſons for any term or term of years not exceeding twenty-one years, in poſſeſſion and not in reverſion or by way of future intereſt, ſo as upon every ſuch leaſe or leaſes there be reſerved during the continuance thereof to the perſon or perſons to whom the next and immediate reverſion or remainder of the premiſſes ſhall for the time being belong, the beſt and moſt improved yearly rent or rents that can be had for the ſame, without any fine, or any thing in lieu of a fine, and ſo as none of the ſaid leaſes be made without impeachment of waſte, and ſo as in every ſuch leaſe there be contained a clauſe of re-entry for non-payment of rent; and my will alſo further is, that it

ſhall and may be lawful to and for any ſuch tenant or tenants for life reſpectively, being in poſſeſſion, by any deed or deeds duly executed in the preſence of two or more credible witneſſes, to limit and appoint either before or after marriage, any part or parts of the ſaid manors, *&c.* whereof he or they ſhall be reſpectively poſſeſſed, unto or to the uſe of any wife or wives which he or they ſhall marry; for her or their life or lives reſpectively, for or in part of her or their jointure or jointures, ſo as ſuch part or parts ſo to be limited and appointed, reſpectively exceed not 100*l.* a-year, for or in reſpect of 1000*l.* portion, or the value thereof, to be received by ſuch tenant or tenants for life reſpectively, (to wit) 1000*l.* for 100*l.* a-year, and no more may be ſettled in jointure, and ſo in proportion for any greater or leſſer portion or fortune, and ſo as no ſuch jointure be made diſpuniſhable of waſte. Alſo I give and bequeath unto my grandaughter upon the day of her marriage, the ſum of *l*, ſo as ſhe marries with the conſent of her parents or guardians, and of my ſaid truſtees or the ſurvivors or ſurvivor of them, if any of them ſhall be then living; and to my grandaughters and reſpectively, upon their reſpective marriages, the ſum of *l.* a-piece, ſo as they reſpectively marry with the like conſent; but my will is, and I do hereby declare, that if any of my ſaid grandaughters ſhall marry without ſuch conſent as aforeſaid,

ſaid, then the reſpective legacy or legacies of ſuch of them ſo marrying without ſuch conſent ſhall not be paid, but be diſpoſed of by my ſaid truſtees, or the ſurvivors or ſurvivor of them, for the ſame purpoſes as the reſidue of my perſonal eſtate is herein before appointed; and I do appoint all my legacies to be paid out of my perſonal eſtate in caſe it ſhall be ſufficient for that purpoſe, and in default thereof then out of my real eſtate; and laſtly, I do hereby conſtitute and appoint
executors of this my will; and I do revoke all other wilis by me heretofore made. In witneſs, *&c.*

A general form of a codicil to a will where only ſome few additional legacies are given.

WHEREAS I *A. B.* of, *&c.* have made and duly executed my laſt will and teſtament in writing, bearing date, *&c.* now I do hereby declare this preſent writing to be as a codicil to my ſaid will, and direct the ſame to be annexed thereto, and taken as part thereof; and I do hereby give and bequeath, *&c.* In witneſs whereof I the ſaid *A. B.* have to this codicil ſet my hand and ſeal the day of

Another

Another general form of a codicil to a Will where ſeveral legacies are revoked.

WHEREAS I *A. B.* of, *&c.* have by my laſt will and teſtament in writing duly executed, bearing date, *&c.* given and bequeathed to, *&c.* now I the ſaid *A. B.* being minded to alter my ſaid will in reſpect to the ſaid legacies, do therefore make this preſent writing, which I will and direct to be annexed as a codicil to my ſaid will, and taken as part thereof; and I do hereby revoke the ſaid legacies by my ſaid will given to and I do give to each of them the ſaid and the ſum of *l.* only, and I give unto, *&c.* and I do ratify and confirm my ſaid will in every thing except where the ſame is hereby revoked and altered as aforeſaid. In witneſs, *&c.*

THIS

THIS is the laſt will and teſtament of me of I deſire that my body may be interred in the pariſh church of in the county of in a private manner, at the diſcretion of my executors herein after named. I give and bequeath unto ſuch perſon or perſons, whoſe name or names ſhall at the time of my deceaſe be found contained in any liſt or liſts, note or notes, or other writing, written or ſigned by me, the ſeveral and reſpective ſum and ſums of money which ſhall in ſuch liſt or liſts, note or notes, or other writing (written or ſigned as aforeſaid) be ſet down, mentioned and expreſſed to be by me given to them reſpectively; alſo I give and bequeath unto *F. A.* of in the county of Eſq; and *H. B.* of, *&c.* and to their heirs and aſſigns, for and during the natural life of my daughter *M.* now the wife of of in the county of an annuity or yearly rent-charge of *l.* of lawful money of *Great Britain*, to be yearly and every year iſſuing and payable out of all my manors, meſſuages, lands, tenements and hereditaments, in the ſaid county of upon truſt nevertheleſs that they my ſaid truſtees or the ſurvivor of them, or the proper repreſentative or repreſentatives of ſuch ſurvivor, ſhall and do pay, apply and diſpoſe of the ſaid annuity or yearly rent-charge of *l.* unto my ſaid daughter,

or unto ſuch perſon or perſons, and for ſuch uſes and purpoſes, as ſhe my ſaid daughter ſhall from time to time (notwithſtanding her coverture) by any note or notes in writing under her hand direct or appoint, to the intent that the ſame may not be at the diſpoſal of, or ſubject or liable to the controul, debts, forfeitures, engagements or other acts of her preſent or any after-taken huſband, but only at her own ſole and ſeparate diſpoſal, and for her own ſole and ſeparate uſe and benefit. And it is my will and deſire, that the aforeſaid annuity or yearly rent-charge of *l.* ſhall be paid to my ſaid daughter by two equal half yearly payments, (that is to ſay) on the feaſt of St. *Michael* the *Archangel*, and on the feaſt day of the *Annunciation of the bleſſed Virgin Mary* in every year, for and during the natural life of my ſaid daughter; the firſt of the ſaid half-yearly payments to begin and to be made on ſuch of the ſaid feaſts as ſhall firſt happen next after my deceaſe; and my will further is, that it ſhall and may be lawful to and for my ſaid truſtees and the ſurvivor of them, or the proper repreſentative or repreſentatives of ſuch ſurvivor, from time to time, in caſe of non-payment of the ſaid annuity or any part thereof, to raiſe the ſame by diſtreſs upon all or any part of the premiſſes herein before charged therewith, together with the neceſſary coſts and charges attending ſuch diſtreſs; (the daughter's receipt alone to be a good diſcharge, *&c.*) and as a further proviſion for my

my ſaid daughter, for her ſeparate uſe (over and above the annuity or rent-charge herein before given for her benefit, for and during the term of her natural life as aforeſaid) I do hereby give and bequeath unto my ſaid truſtees their executors and adminiſtrators *l.* capital ſtock now in the united *Eaſt-India* company, upon the truſts herein after mentioned and expreſſed, of and concerning the ſame (that is to ſay) upon truſt that they my ſaid truſtees, their executors or adminiſtrators ſhall and do pay, apply and diſpoſe of the yearly dividends, intereſt and produce of the ſaid *l.* capital ſtock, as the ſame ſhall from time to time (during the natural life of my ſaid daughter) ariſe or be received, unto the proper hands of her my ſaid daughter, or otherwiſe to permit and ſuffer her my ſaid daughter to receive the ſame, to and for her ſole uſe and benefit, to the intent that the ſame may not be at the diſpoſal of, or ſubject or liable to the controul, debts, acts or engagements of her preſent or any after-taken huſband, but only at her own ſole and ſeparate diſpoſal; and upon further truſt, that they my ſaid truſtees, their executors or adminiſtrators, ſhall and do from and immediately after the deceaſe of my ſaid daughter, tranſfer and diſpoſe of the ſaid *l.* capital ſtock, unto and for ſuch uſes, intents and purpoſes, and in ſuch manner and form as ſhe my ſaid daughter (notwithſtanding her coverture) or whether ſhe ſhall be ſole or married,

married, by her laſt will and teſtament in writing, or any writing purporting to be her laſt will and teſtament, and to be by her ſigned, ſealed and publiſhed in the preſence of three or more credible witneſſes, ſhall direct, limit, give or appoint the ſame; and in default of ſuch direction, limitation, gift or appointment, then I will and direct that the ſaid *l.* capital ſtock or ſuch part thereof, touching which my ſaid daughter ſhall have made no diſpoſition as aforeſaid, ſhall be aſſigned and transferred by my ſaid truſtees or the ſurvivor of them, his executors or adminiſtrators, unto of, *&c.* his executors and adminiſtrators, to and for his and their own uſe and benefit; and my will is, that the receipt of my ſaid daughter alone under her hand, for the dividends, intereſt and produce of the ſaid *Eaſt-India* ſtock, ſhall from time to time, notwithſtanding her coverture, be good and ſufficient diſcharges to the perſon or perſons paying the ſame annuities and dividends, intereſt or produce, for ſo much thereof for which ſuch receipt ſhall be given; and my will is, that in caſe the ſaid *Eaſt-India* ſtock, or any part thereof, ſhall be redeemed or paid off, that then my ſaid truſtees, their executors or adminiſtrators, ſhall and do lay out the monies to be received for and in lieu of the ſaid ſtock ſo redeemed or paid off, in ſuch ſtocks, funds, or other publick or private ſecurities as my ſaid daughter ſhall agree to; and that the monies

monies ſo received and laid out ſhall be ſubject to the ſame truſts, and for the ſame or the like intents and purpoſes as are herein before declared of and concerning the ſame. And whereas my brother late of deceaſed, did (among other things) by his laſt will and teſtament in writing, give to me the ſum of *l.* to be by me given away, diſtributed, divided and diſpoſed of to and amongſt ſuch perſons, and in ſuch ſort, manner and ſhares, and at ſuch times as I ſhall think fit; now my will is, and I do hereby direct that the ſaid ſum of *l.* ſhall be diſtributed, divided and diſpoſed of by my executors herein after-named, within ſix months after my deceaſe, to and amongſt the ſeveral perſons, and in ſuch proportions and manner as are herein after mentioned and expreſſed, of and concerning the ſame, (that is to ſay) to of in the county of the ſum of *l.* (part thereof) to of in the county of the like ſum of *l.* (other part thereof) and to of in the ſaid county of the like ſum of *l.* (other part thereof) and all the reſidue of the ſame *l.* to be retained by my executor herein after named, and to be converted and diſpoſed of to his own uſe. *Item*, I give, deviſe and bequeath all and every my manors, meſſuages, lands, tenements and hereditaments whatſoever, in the ſeveral counties of and every or any

any of them, or elſewhere within the realm of *England*, as well freehold, as copyhold (I having duly ſurrendered the copyhold to the uſe of my will) and leaſehold for lives, with their and every of their appurtenances, unto and to the uſe and behoof of of in the county of his heirs and aſſigns for ever, (ſubject nevertheleſs, as to my ſaid eſtate in the ſaid county of to the aforeſaid annuity or yearly rent-charge by me herein before given thereout or charged thereon, in truſt and for the benefit of my ſaid daughter, for her life as aforeſaid. As to, for and concerning all the reſt and reſidue of my perſonal eſtate whatſoever and whereſoever, and of what nature, kind or quality ſoever the ſame may be, and not herein before given and diſpoſed of (after payment of my debts, legacies and funeral expences) I give and bequeath the ſame and every part thereof, unto the ſaid his executors, adminiſtrators and aſſigns, to and for his and their own uſe and benefit abſolutely; and I do hereby conſtitute and appoint the ſaid ſole executor of this my laſt will and teſtament, hereby revoking all other wills by me made. In witneſs, *&c.*

THIS

THIS is the laſt will and teſtament of me of the pariſh of in the county of Firſt, I will that all ſuch debts as I ſhall juſtly own at the time of my deceaſe, together with my funeral charges and expences, be in the firſt place paid by my executors herein after named; and as to my eſtate both real and perſonal, I diſpoſe thereof as follows, that is to ſay, I give and deviſe unto of in the county of eſquire, all thoſe my freehold meſſuages, lands, tenements and hereditaments, ſituate, lying or being in or near and or either of them, in the counties of and or either of them, and now or late in the ſeveral tenures or occupations of, *&c.* or one of them, their or one of their aſſigns, leſſees or undertenants, and all thoſe my copyhold meſſuages, lands, tenements and hereditaments, ſituate, lying or being in or near and every or any of them, in the ſaid counties of and or either of them, and which now are or late were in ſeveral tenures, poſſeſſions or occupations of the ſaid and or any of them, their or any of their aſſigns, leſſees or undertenants (which ſaid copyhold meſſuages, *&c.* I have duly ſurrendered to the uſe of my will) To have and to hold, all and every the ſaid meſſuages, lands, tenements, hereditaments

hereditaments and premiſſes, with their and every of their appurtenances, unto and to the uſe of the ſaid and the heirs of his body, lawfully to be begotten; and for want of ſuch heirs, to my own right heirs for ever. Alſo I give and deviſe unto all that my meſſuage or tenement with the appurtenances thereunto belonging, heretofore in the tenure or occupation of To have and to hold the ſaid laſt mentioned meſſuage or tenement, and premiſſes, with the appurtenances, (ſubject and charged and chargeable with the annuity, yearly rent or ſum of *l.* herein after mentioned) unto him the ſaid and his aſſigns, for and during the term of his natural life; and from and immediately after his deceaſe, I give and deviſe the ſame meſſuage, *&c.* and premiſſes, with the appurtenances (ſubject to, and charged and chargeable with the ſame annuity, yearly rent or ſum of *l.*) unto and for the uſe of the ſaid and the heirs of his body lawfully to be begotten; and for default of ſuch heirs, then to my own right heirs for ever. And I do hereby give and deviſe unto wife of of in the county of and her aſſigns, for and during the term of her natural life, an annuity, or clear yearly rent or ſum of *l.* of lawful money of *Great Britain*, free of all taxes and other deductions, to be iſſuing and payable out of the ſaid laſt-mentioned meſſuage and tenement, *&c.* and premiſſes,

and

and to be paid and payable by equal half-yearly payments, at the two moſt uſual feaſt days of payment in the year, (that is to ſay) the feaſt of annunciation of the bleſſed *Virgin Mary*, and St. *Michael* the archangel; the firſt payment thereof to be made on ſuch of the ſaid feaſt days as ſhall happen next after my deceaſe; and I do hereby charge and ſubject the ſaid meſſuages or tenements, *&c.* with and to payment of the ſaid annuity, yearly rent or ſum of *l.* accordingly; and my will is, that in caſe the ſame annuity, yearly rent or ſum of *l.* or any part thereof, ſhall be behind or unpaid by the ſpace of next over or after either of the aforeſaid feaſt days, whereon the ſame is herein before directed and appointed to be paid as aforeſaid, that then and ſo often it ſhall and may be lawful for the ſaid and her aſſigns, to enter into, and upon all and every, or any part of the ſaid premiſſes charged with the ſaid annuity as aforeſaid, and diſtrain for the ſame, or for ſo much thereof as ſhall be ſo in arrear, and all coſts and charges occaſioned by non-payment thereof. Alſo I give, deviſe and bequeath unto of in the ſaid county of all thoſe my two meſſuages or tenements, with the appurtenances, in (now in the ſeveral tenures, *&c.*) which I hold by virtue of a leaſe from of (ſince deceaſed) and all my eſtate, right, title, term of years, and intereſt of

of and in the ſame premiſſes reſpectively, To have and to hold the ſaid laſt-mentioned meſſuages and tenements, hereditaments and premiſſes, with their and every of their appurtenances, unto the ſaid his executors, adminiſtrators and aſſigns, to and for his and their own uſe and benefit abſolutely. [And then the teſtator proceeds to give ſeveral pecuniary legacies, and to appoint a reſiduary legatee and executors, and ſo concludes.] In witneſs, *&c.*

A codicil to a Will.

A CODICIL to be added to, and to be taken as part of the laſt will and teſtament of me *M. B.* of *N.* and *W.* in the county of *L.* Whereas by indenture of leaſe and releaſe, bearing date reſpectively the firſt ſix days of *June* in the year of our Lord 1721, and made or mentioned to be made between *M. M. B.* of *N.* and *W.* by the name of *M. B. W.* of the one part, and *M. K.* of *A.* in the county of *Cornwall*, Eſquire, and *T. R.* of the *Middle Temple*, Eſquire, of the other part, I the ſaid *M. B.* of *N.* and *W.* for the ſettling the manors, lands, tenements and hereditaments there. in mentioned, and in conſideration of 10*s*, of lawful money, did bargain, ſell, alien, releaſe and confirm unto the ſaid *M. K.* and *T. R*

T. R. the manors, advowſons, meſſuages, lands, tenements and hereditaments therein contained, and amongſt others, all that the manor or reputed manor of *L.* with the rights, members and appurtenances thereof, in the county of *B.* and the meſſuages, lands, tenements and hereditaments of me the ſaid *M. B.* of *N.* and *W.* in *L.* aforeſaid, and *F.* or either of them, in the ſaid county of *B.* to hold to the ſaid *M. K.* and *T. R.* their heirs and aſſigns for ever, to and for the uſes, intents and purpoſes, and ſubject to the powers, limitations and proviſoes therein after expreſſed and contained of and concerning the ſame, in which ſaid indenture of releaſe is contained a proviſo, that it ſhould and might be lawful to and for me the ſaid *M. B.* of *N.* and *W.* from time to time, at any time or times, during my life, until I ſhould attain the age of eighty years, by any deed or writing, laſt will or teſtament executed by me in the preſence of two or more credible witneſſes, to revoke or alter all or any of the uſes or truſts thereby limited or appointed, or to limit any other or new eſtate, uſes, truſts or diſpoſitions, of or touching the premiſſes or any part thereof: and whereas by indenture, bearing date the fourteenth day of *October* in the year of our Lord 1737, and made or mentioned to be made between me the ſaid *M. B.* of *N.* and *W.* of the one part, and *T. B.* of *S.* in the county of *E.* Eſquire, *J. L.* of the pariſh of St. *J.* within the liberty of the city of *W.*

in the county of *M.* Eſq; and *E. R.* of the pariſh of St. in the ſaid county of *M.* Eſq; of the other part, reciting the ſaid herein before-recited indenture, and alſo reciting two ſeveral other indentures made ſubſequent thereto, whereby the uſes of and concerning the ſaid premiſſes, in and by the ſaid firſt-mentioned indenture limited and declared, were altered and revoked of and concerning the ſaid premiſſes, but ſubject to a like proviſo for altering and revoking the ſame, and appointing new uſes as in the ſaid firſt recited indenture contained; I the ſaid *M. B.* of *N.* and *W.* in purſuance of the ſaid power to me reſerved, and being then under the age of eighty years, did revoke the uſes in and by the ſaid ſeveral recited indentures declared of and concerning the ſaid premiſſes, and did limit, appoint and declare the ſame premiſſes to and for the uſes and truſts, and under the proviſoes therein after expreſſed concerning the ſame; in which indenture is alſo contained a proviſo, that it ſhould and might be lawful to and for me the ſaid *M. B.* of *N.* and *W.* from time to time, and at all times thereafter, during my life, by any deed or deeds to be by me executed in the preſence of two or more credible witneſſes, or by my laſt will in writing, or codicil thereto, to be by me ſigned in the preſence of three or more credible witneſſes; to revoke or alter all or any of the uſes, eſtates and truſts therein before limited or declared of or in all or any

of

of the premiſſes, and to limit any new or other eſtates, uſes, truſts or diſpoſitions of or touching the ſame ſo revoked or any part thereof: and whereas I have made and publiſhed a will in writing, bearing date the ſame 14th day of *October* 1737; now I the ſaid *M. B.* of *N.* and *W.* in purſuance and by virtue of the ſaid power to me reſerved in and by the ſaid laſt-recited indenture of the 14th of *October* in the year 1737, and all and every other power and powers and authorities to me given or reſerved in this behalf, do by this my codicil revoke, annul and make void all and every the uſes, truſts, eſtates, limitations and appointments in and by the ſaid ſeveral recited indentures, or any of them limited, created or declared of and concerning all that the ſaid manor or reputed manor of *L.* with the rights, members and appurtenances thereof, in the ſaid county of *B.* and all the ſaid meſſuages, lands, tenements and hereditaments of the ſaid *M. B.* of *N.* and *W.* in *L.* and *F.* aforeſaid or either of them, in the ſaid county of *B.* in and by the ſaid firſt-recited indenture of releaſe, granted, releaſed or conveyed, with their and every of their appurtenances; and I the ſaid *M. B.* of *N.* and *W.* in purſuance of and by virtue of all and every the power, *&c.* aforeſaid do direct, limit, appoint and declare, that the ſaid firſt-recited indenture of releaſe, and the grant and conveyance thereby made as to all that the ſaid manor or reputed manor of *L.* with

the rights, members and appurtenances thereof, in the ſaid county of *B.* and all the ſaid meſſuages, lands, tenements and hereditaments of the ſaid *M. B.* of *N.* and *W.* in *L.* and *F.* aforeſaid, or either of them, in the ſaid county of *B.* in and by the ſaid firſt-recited indenture of releaſe granted, releaſed or conveyed, with their and every of their appurtenances, be and enure, and I do hereby give and deviſe the ſame in manner following, that is to ſay, To the uſe of the Honourable *H. B.* Eſq; commonly called Lord *H. B.* brother of his Grace the Duke of St. *A.* for the term of his natural life, without impeachment of or any manner of waſte; and from and after the determination of that eſtate by forfeiture, or otherwiſe in his lifetime, then to the uſe of the ſaid *T. B. I. L.* and *E. R.* and their heirs, during the natural life of the ſaid *H.* B. in truſt to preſerve the contingent remainders herein after limited, from being defeated and deſtroyed, and for that purpoſe to make entries or bring actions, as the caſe ſhall require; but nevertheleſs to permit and ſuffer the ſaid *H. B.* during his natural life to receive and take the rents and profits of the ſame premiſſes to his own uſe; and from and after the deceaſe of the ſaid *H. B.* to the uſe of *M.* the wife of the ſaid *H. B.* for the term of her natural life, without impeachment of or for any manner of waſte; and from and after the determination of that eſtate by for-

forfeiture or otherwiſe, during her life, to the uſe of the ſaid *T. B. I. L.* and *E. R.* and their heirs, during the natural life of the ſaid *M.* in truſt to preſerve the contingent remainders herein after limited, from being defeated and deſtroyed, and for that purpoſe to make entries or bring actions, as the caſe ſhall require; but nevertheleſs to permit and ſuffer the ſaid *M.* during her life, to receive and take the rents, iſſues and profits of the ſame premiſſes to her own uſe: and from and after the deceaſe of the ſaid *M.* to the uſe of the firſt ſon of the body of the ſaid *M.* by the ſaid *H. B.* begotten or to be begotten, and the heirs-male of the body of ſuch firſt ſon lawfully iſſuing; and for default of ſuch iſſue, to the uſe of the ſecond, third, fourth, fifth, ſixth, ſeventh, eighth, ninth, tenth, and all and every other ſon and ſons of the body of the ſaid *M.* by the ſaid *H. B.* begotten or to be begotten, ſeverally and ſucceſſively, one after another, as they ſhall be in ſeniority or age and priority of birth, and the heirs-male of their reſpective bodies lawfully iſſuing; the elder of ſuch ſons and the heirs-male of his body, being always preferred and to take before the younger of ſuch ſons and the heirs-male of his and their body and bodies; and for default of ſuch iſſue male, to the uſe of all and every the daughter or daughters of the body of the ſaid *M.* by the ſaid *H. B.* begotten or to be begotten, as tenants in common, and not

not as jointenants, and the heirs of their ſeveral and reſpective bodies lawfully iſſuing; and failing iſſue of any of the ſaid daughters, to the uſe of all and every other ſuch daughter or daughters as tenants in common, and not as jointenants, and the heirs of their reſpective body or bodies of ſuch other daughter or daughters lawfully iſſuing; and for default of ſuch iſſue, to the uſe of ſuch perſon or perſons, and for ſuch eſtate or eſtates, and in ſuch proportions, and in ſuch manner as ſhe the ſaid *M.* whether covert or ſole, ſhall by any deed or writing, by her ſcaled and delivered in the preſence of three or more credible witneſſes, or by her laſt will in writing, or any writing purporting to be her laſt will, and by her ſigned and publiſhed in the preſence of a like number of witneſſes, limit and appoint; and in default of ſuch appointment, then to the uſe of the right heirs of the ſaid *M. B.* for ever: provided always, and my will and meaning is, that it ſhall and may be lawful to and for the ſaid *H. B.* and after his deceaſe to and for the ſaid *M.* his wife, in caſe ſhe ſhall ſurvive him, by indenture to make any leaſe or leaſes of the premiſſes, for any term or number of years, not exceeding twenty-one years from the making thereof, ſo as upon every ſuch leaſe or leaſes there be reſerved and made payable, during the continuance of the ſaid reſpective terms thereby granted, the greateſt improved yearly rent that can or may be rea-

reaſonably had for the ſame, to be incident to and go along with the remainder or reverſion expectant on ſuch leaſes reſpectively, and ſo as ſuch leaſes be not by any expreſs words therein contained, freed from impeachment of waſte; and ſo alſo as there be contained in every ſuch leaſe or leaſes a power of re-entry, in caſe the rent or rents thereupon to be reſpectively reſerved, or any part thereof, ſhall be behind or unpaid by the ſpace of twenty-one days next after any the times of payment therein to be reſpectively limited; and ſo as the reſpective leſſee or leſſees therein named, do execute a counterpart of ſuch leaſe or leaſes reſpectively: and I do hereby ratify and confirm all and every the uſes, truſts, eſtates, limitations and appointments in and by the ſaid recited indenture of the 14th of *October* 1737, limited appointed or declared of or concerning all and every or any of the manors, meſſuages, lands, tenements and hereditaments therein compriſed, except and other than the ſaid manor of *L.* with its appurtenances, and the lands, tenements and hereditaments aforeſaid, in *L.* and *F.* aforeſaid, or either of them, in the county of *B.* and I do alſo hereby declare, that my ſaid will in writing, bearing date the 14th day of *October* 1737. and this codicil which I will ſhall be added to and deemed part thereof, do contain my laſt will and teſtament. In witneſs whereof I have to this codicil,

codicil, and to a duplicate thereof, both of the ſame tenor and effect, each contained in two ſkins of parchment, ſet my hand and ſeal this day of, *&c.*

Signed, ſealed and publiſhed by the ſaid *M. B.* of *N.* and *W.* as and for a codicil to be added to, and be part of, her laſt will and teſtament, in the preſence of us who have ſubſcribed our names in her preſence.

A nuncupative Will.

T. B. his will by word of mouth, made and declared by him about the day of in the preſence of us who have hereunto ſubſcribed our names as witneſſes hereto. My will is that, *&c.* (*the very words*)

J. G.
R. S.
F. G.

A pre-

A preamble to a will, the teſtator being about to go to ſea.

IN the name of God, *Amen.* I *C. D.* of, *&c.* mariner, being in good health, and of ſound mind, and being forthwith to depart this kingdom on a voyage to, *&c.* in the kingdom of, *&c.* and well knowing the danger of the ſeas, and the uncertainty of life, do make this my laſt will and teſtament as follows, that is to ſay, (*and then he proceeds to give ſeveral legacies*, &c.)

Here follow the forms of ſeveral bequeſts in a will.

And for the better education of my children *A. B.* and *C.* now infants of very tender years, that is to ſay, the ſaid *A.* of the age of or thereabouts, the ſaid *B. &c.* I do give and diſpoſe of the tuition and cuſtody of them, and every of them, unto *M.* my wife, until ſuch time as they and either of them reſpectively continue unmarried, and under the age of twenty-one years, and my wife remain my widow; but if my wife die or marry, during the ſingle life and nonage of any of my ſaid children, then I give the cuſtody and tuition of ſuch of my children ſo being unmarried, and under the age of twenty-one years, at the marriage or death of

of my wife, which ſhall firſt happen unto Alſo I do allow for my ſon *A.*'s maintenance at ſchool for ſo many years as he ſhall remain there, *l. per ann.* for my ſon *B.*'s maintenance until he be put to a grammar ſchool *l. per ann.* and when he is placed at a grammar ſchool *l. per ann.* and when my wife or other truſtees ſhall think fit to remove my ſon *A.* from ſchool, I deſire he may be placed, *&c.*

I give and bequeath the houſe I now live in, and the appurtenances thereto belonging, which I hold by leaſe from *W. S.* Eſq; ſituate, *&c.* to my ſon *C. B.* to hold to him during his natural life; and after his deceaſe, I give the ſame to my daughter *E. B.* during the remainder of my eſtate and intereſt therein.

I give and bequeath unto my kinſman *C. D.* and my loving friend *E. F.* and *G.* of all that my leaſehold eſtate which I lately purchaſed of *T. B.* Gentleman, ſituate for a term of years yet to come, determinable together with the indenture of leaſe, whereby I hold the ſame, to have and to hold to them the ſaid *C. D. E. F.* and *G. H.* their executors, adminiſtrators and aſſigns, from and immediately after my deceaſe, for and during the reſidue and remainder of the term then to come and unexpired, granted to me by the ſaid indenture of leaſe, upon this ſpecial truſt and confidence in them repoſed, and to the intent and purpoſe, that they the ſaid *C. D.*

&c.

&c. and the ſurvivors and ſurvivor of them, and the executors and adminiſtrators of ſuch ſurvivor, do and ſhall permit and ſuffer her my ſaid wife *E. B.* To have, hold and enjoy all ſuch my ſaid leaſehold eſtate to them given as aforeſaid, and to receive and take to her own uſe and behoof, the rents, iſſues and profits thereof, from and immediately after my deceaſe, for and during ſo much of the ſaid term as ſhall run out and expire in the lifetime of her my ſaid wife; and after her deceaſe, upon this further truſt and confidence, and to the intent and purpoſe, that they ſaid *C. D. &c.* and the ſurvivors and ſurvivor of them, and the executors and adminiſtrators of ſuch ſurvivor, do and ſhall, out of the rents, iſſues and profits ariſing out of my ſaid leaſehold eſtate, well and truly pay, or cauſe to be paid, unto my ſaid daughter *D. B.* her executors, adminiſtrators and aſſigns, for and during ſo much of the ſaid terms to me therein granted as aforeſaid, as ſhall run out and expire in the lifetime of her my ſaid daughter, the yearly ſum or annuity of *l.* to be paid, *&c.* by even and equal portions; the firſt payment thereof to be made at, *&c.* which ſhall firſt and next happen after the deceaſe of my ſaid wife; and upon this further truſt and confidence, and to the intent and purpoſe, that they the ſaid *C. D. &c.* and the ſurvivor, *&c.* and the executors, *&c.* do and ſhall permit and ſuffer my ſaid ſon *T. B.* to have, hold and enjoy all ſuch my leaſehold eſtate, charged with

with the ſaid annuity of *l. per ann.* to my ſaid daughter, and to receive and take the overplus of the rents, iſſue and profits thereof to his own proper uſe and behoof, from and immediately after my ſaid wife's deceaſe, for and during all the reſt, reſidue and remainder of the term to me therein granted, which ſhall be then to come and unexpired.

I do hereby give, deviſe and bequeath all thoſe my copyhold meſſuages, lands, tenements and hereditaments in and every of them, with the rents, iſſues and profits thereof, (the ſame being already ſurrendered to the uſe of my will) unto my ſaid daughter *A. B.* from and immediately after my deceaſe, for and during her natural life; and after her deceaſe, then I give and deviſe the ſame to my ſon *C. D.* of, *&c.* and the heirs of his body lawfully to be begotten; and for default of ſuch iſſue, then to the heirs on the body of my ſaid daughter *A. B.* lawfully begotten; and for default of ſuch iſſue, then to *E. F.* ſon of of, *&c.* and to his heirs for ever.

I give and deviſe all thoſe my freehold lands, tenements and hereditaments whereof I am ſeiſed in fee-ſimple, ſituate, lying and being in with the rents, iſſues and profits of all and ſingular the ſaid premiſſes unto *C. D.* and *E. F.* of To have and to hold the ſaid lands, tenements, hereditaments and premiſſes to them the ſaid *C. D.* and *E. F.* their executors, adminiſtrators and aſſigns, from and immediately after my

my deceaſe, for and during and unto the full end and term of ninety-nine years from thence next enſuing, and fully to be complete and ended, without impeachment of waſte: in truſt nevertheleſs, and to the intent and purpoſe, that the ſaid *C. D.* and *E. F.* their executors, adminiſtrators and aſſigns, do and ſhall out of the rents, iſſues and profits thereof, or thereby ariſing, or by any aſſignment of the ſaid term, or by grant, mortgage or ſale of the ſaid premiſſes, or any parcel thereof, raiſe and levy the clear ſum of *l.* and the ſame being ſo raiſed as aforeſaid, to pay or ſecure to be paid unto my grandaughter *G. B.* when and as ſoon as ſhe ſhall attain to the age of twenty-one years, or be married (which ſhall firſt happen) or if it ſhall happen that my ſaid grandaughter *G. B.* ſhall depart this life before ſhe ſhall have attained the age of twenty-one years, or be married; then upon this further truſt, and to the intent and purpoſe, that they the ſaid *C. D.* and *E. F.* their executors, adminiſtrators and aſſigns, do and ſhall out of the rents, iſſues and profits, or by grant, mortgage or ſale of the ſaid premiſſes, or any part thereof, or by aſſignment of the ſaid term, raiſe the ſum of *l.* clear as aforeſaid, and the ſame to pay, or ſecure to be paid unto the child (be the ſame ſon or daughter) which ſhall hereafter be lawfully iſſuing on the body of my daughter; and which ſhall live to attain the ſaid age of twenty-one years, or marry, which

ſhall

ſhall firſt happen, if a daughter; if a ſon, then on attaining the ſaid age of twenty-one years only, which ſaid ſum of *l.* ſo to be raiſed and paid as aforeſaid, I do hereby give and bequeath unto my ſaid grandaughter *E. E.* and in caſe of her deceaſe, to ſuch next child ſo hereafter to be iſſuing on the body of my ſaid daughter who ſhall attain the ſaid age of twenty-one years, or be married as aforeſaid; and from and immediately after, and as ſoon as the ſaid *C. D.* and *E. F.* or their heirs, ſhall have raiſed the ſaid ſum of *l.* clear from all payments and deductions, out of my ſaid freehold lands, tenements and hereditaments, as herein before is appointed, or in caſe of the death of the ſaid *E. B.* or other child reſpectively, before the reſpective times of payment aforeſaid, then my will is, and I do hereby give and deviſe all and ſingular the premiſſes aforeſaid, and the reverſion and reverſions, remainder and remainders of all and ſingular thoſe my freehold lands, tenements and hereditaments aforeſaid, with the rents, iſſues and profits thereof, and of every part and parcel thereof, unto my ſaid daughter *D. B.* to have and to hold to her my ſaid daughter *D. B.* from henceforth, for and during the term of her natural life; and from and immediately after the deceaſe of the ſaid *D. B.* then I do hereby give and deviſe the ſaid premiſſes, and the reverſion and reverſions, remainder and remainders of all and ſingular thoſe my ſaid freehold lands

and

and premiſſes, with the rents, iſſues and profits thereof, and of every part thereof, to my grandſon *T. B.* ſon of my ſaid daughter *D. B.* and to the heirs of his body lawfully to be begotten, and for want or default of ſuch iſſue, then I do hereby give and deviſe all and ſingular thoſe my ſaid freehold lands, tenements and hereditaments in aforeſaid, (being part of the freehold lands, tenements and hereditaments above mentioned) with the rents, iſſues and profits thereof, unto and his heirs for ever; and alſo all and ſingular thoſe my lands, tenements and hereditaments in aforeſaid, (being the reſidue and remainder of my freehold lands, tenements and hereditaments above mentioned) with the rents, iſſues and profits thereof (for default of ſuch iſſues as aforeſaid) unto and his heirs for ever. I give to *A. B.* and *C. D.* ſons of my brother *T. B.* the ſum of *l.* a-piece, to be paid or ſecured to them reſpectively, by my ſaid brother *L. B.* as ſoon as they ſhall reſpectively attain the age of twenty-one years, and not otherwiſe; and my will is, and I hereby order, that in caſe my brother *L. B.* ſhall from time to time, as the ſame ſhall become due, pay unto my ſaid nephews, *A. B.* and *C. D.* or give to them reſpectively, ſuch ſecurity within after my deceaſe, as they or their father ſhall approve for the payment to them of the ſaid *l.* a-piece reſpectively; then and in ſuch caſe, and not otherwiſe

otherwiſe I hereby give, deviſe and bequeath unto my ſaid brother *L. B.* all that meſſuage or tenement, *&c.* now in hand, called by the name of, *&c.* late in the tenure of, *&c.* being part of my manor, *&c.* and alſo the reverſion and inheritance of all thoſe ſeveral tenements, and all lordſhips, rents and heriots to each of them belonging, now in the ſeveral poſſeſſions of with the royalty of the lordſhip of my ſaid manor of with its rights, members and appurtenances, to hold to my ſaid brother *L. B.* and his heirs and aſſigns for ever.

And whereas by the death of my uncle *T. B.* ſeveral plantations and houſes, farms and negro ſervants, lands, tenements and hereditaments in the iſland of *Jamaica*, deſcended to my father *T. B.* late of deceaſed; and by virtue of a diſpoſition by him made thereof, and a partition of the ſaid premiſſes, one fifth part of the ſaid plantations is legally come to and veſted in me; now I do hereby give, deviſe and bequeath all ſuch my ſaid fifth part or ſhare of and in the ſaid plantations and premiſſes aforeſaid (if the ſame ſhall remain unſold at the time of my deceaſe) together with the increaſe and profits ariſing therefrom, unto my ſaid brother *L. B.* his heirs, executors, adminiſtrators and aſſigns for ever.

I give and deviſe unto *R. S.* and *E. B.* of and their heirs, the reverſion in fee of all my freehold and copyhold lands and

and tenements, expectant upon the death of ſituate, *&c.* and alſo all other my freehold and copyhold lands and tenements in , in poſſeſſion, or wherein I have any right of equity of redemption, to hold the ſame unto the ſaid *R. S.* and *E. B.* and his heirs for ever, upon truſt and confidence, nevertheleſs, that immediately after my deceaſe, they the ſaid *R. S.* and *E. B.* ſhall vend, ſell and diſpoſe of the ſaid reverſion of my freehold and copyhold lands, tenements and hereditaments, expectant upon the death of and alſo immediately after my deceaſe, ſell and diſpoſe of all other my freehold and copyhold lands and tenements in poſſeſſion, reverſion, or wherein the right of equity of redemption is in me the ſaid *P. A.* as aforeſaid, to the beſt benefit and advantage, and for the moſt profit they may or can, and out of the monies ariſing by the ſale of the ſaid lands, tenements and hereditaments by me before deviſed, they the ſaid *R. S.* and *E. B.* ſhall well and truly pay, or cauſe to be paid unto my loving wife *E. A.* the ſum of *l.* of, *&c.* and the overplus of the ſaid money, ariſing by the ſale of the ſaid lands, to be paid to my children ſhare and ſhare alike; and alſo all other my meſſuages, lands, tenements and hereditaments whatſoever, ſituate, lying and being in *C.* or elſewhere in the ſaid county of *D.* to my executors herein after named, until my ſon *W.* ſhall attain his age of twenty-one years; and if he ſhall happen to die before he attain ſuch age, then

and in ſuch caſe until *T.* my ſecond ſon ſhall attain his age of twenty-one years; and if he ſhall happen to die before his age, until *R.* my third ſon ſhall attain his age of twenty-one years; and if he ſhall happen to die before ſuch age, until *D.* my fourth ſon ſhall attain ſuch age of twenty-one years; and if he ſhall happen to die before ſuch age, then I deviſe the ſame to my own right heirs for ever. *Item*, my will and meaning farther is, that if my ſaid ſon *W.* ſhall have attained the ſaid age of twenty-one years at the time of my death, or if he hath not then attained the ſaid age, then ſo ſoon after as he ſhall attain the ſaid age, I do give and deviſe the ſaid and all and every other the premiſſes, with their and every of their appurtenances, to *E. F.* and *G. H.* and their heirs, for and during the life of my ſaid ſon *W.* to the intent to ſupport the contingent remainders in this my will after limited, ſo that the ſame may not be deſtroyed; but in truſt, nevertheleſs, to permit and ſuffer him my ſaid ſon *W.* to receive the rents and profits thereof to and for his own uſe, during his natural life; and for and after his deceaſe, then I deviſe the ſaid meſſuages, lands, tenements, hereditaments and premiſſes, to the firſt ſon of the body of my ſaid ſon *W.* lawfully iſſuing (whether then born or unborn) and to the heirs-male of the body of ſuch firſt ſon lawfully iſſuing; and for default of ſuch iſſue, then likewiſe to the ſecond, third and every other ſon of my

ſaid

ſaid ſon *W.* ſucceſſively, and in remainder the one after the other, as they ſhall be in ſeniority of age and priority of birth; and the ſeveral and reſpective heirs-males of the body and bodies of every ſuch ſecond, third and other ſon or ſons (the eldeſt of ſuch ſons and heirs-male of his body being always preferred and to take before any of the younger ſons and the heirs-male of his body). And in caſe of all ſuch iſſue-male failing, and that my ſaid ſon *W.* ſhall have a daughter or daughters at his death (born or unborn) my will is, and I do hereby deviſe the ſaid manor, advowſon, meſſuages, lands, tenements and hereditaments, to the ſaid *E. F.* and *G. H.* and their executors and aſſigns, for and during the term of ninety-nine years thence next enſuing, without impeachment of or for any manner of waſte, and with full and free liberty of and for doing and ſuffering of any waſte; in truſt for the levying or raiſing by, or by the way or means of making any one or more leaſe or leaſes; mortgage or mortgages, ſale or ſales, or other diſpoſals of all, every or any of the premiſſes, or any part or parts thereof, or of the rents, iſſues or profits thereof, or of any part or parts thereof, or by all or any ſuch way, ways or means whatſoever, of the ſum of 1000*l.* of lawful money of *Great Britain*, for ſuch daughter or daughters, to be equally divided between them (if more than one) payable to her or them reſpectively at her or their reſpective age or ages of twenty-one years, or marriage or marriages, whether ſhall firſt happen,

for her or their reſpective portions; and if any ſuch daughter or daughters ſhall happen to die (being more than one) before ſuch her or their reſpective age or ages, marriage or marriages, then and in ſuch caſe the ſurvivor or ſurvivors of them ſhall have her ſhare or ſhares thereof ſo dying; and if all of them ſhall happen to die before ſuch her or their reſpective age or ages, marriage or marriages, then and in ſuch caſe ſuch 1000*l.* or any part thereof, ſhall not be raiſed (if not raiſed before) but if raiſed, ſhall go and be paid and payable unto him, to whom the freehold of and in the premiſſes ſhall then, as herein is after-mentioned, be in truſt for; and in caſe my ſecond ſon *W.* ſhall leave no ſon or daughter at the time of his death (born or unborn) of his body, or if he ſhall have left a daughter or daughters, and the ſaid 1000*l.* ſhall in any ways as aforeſaid be raiſed paid and ſatisfied, then and in ſuch caſe my will and meaning is, the ſaid term of ninety-nine years ſhall, as to all other intents and purpoſes, be void and of no effect. And then I do give and deviſe the ſaid and all and every other the premiſſes, with their and every of their appurtenances, to the ſaid *E. F.* and *G. H.* and their heirs, for and during the life of my ſaid ſon *T.* if he ſhall have then attained the age of twenty-one years, to the intent to ſupport the contingent remainders in this my will after limited, ſo that the ſame be not deſtroyed; but in truſt, nevertheleſs, to permit and ſuffer him my ſaid ſon *T.*

to

to receive the rents, iſſues and profits thereof to and for his own uſe, during his natural life; and from and after his deceaſe, then I deviſe the ſaid manor, &c. to the firſt ſon of the body of my ſaid ſon *T.* lawfully iſſuing, whether then born or unborn, and to the heirs-male of the body of ſuch firſt ſon lawfully iſſuing; and for default of ſuch iſſue, then likewiſe to the ſecond, third and every other ſon of my ſaid ſon *T.* ſucceſſively, and in remainder the one after the other, as they ſhall be in ſeniority of age and priority of birth, and the ſeveral and reſpective heirs-male of the body and bodies of every ſuch ſecond, third and every other ſon and ſons (the eldeſt of ſuch ſon and ſons, and the heirs-male of his body, being always preferred and to take before any of the younger ſons and the heirs-male of his body). And in caſe of all ſuch iſſue-male failing, and that my ſaid ſon *T.* ſhall leave a daughter or daughters at his death (born or unborn) my will is, and I do hereby deviſe the ſaid manor, &c. to the ſaid *E. F.* and *G. H.* and their executors and aſſigns, for and during the term of ninety-nine years thence next enſuing, without impeachment of or for any manner of waſte, and with full and free liberty of and for doing and ſuffering of any waſte; in truſt for the levying and raiſing, by or by the way or means of making any one or more leaſe or leaſes, mortgage or mortgages, ſale or ſales, or other diſpoſal of all, every or any of the ſaid premiſſes, or any part or parts thereof,

or

or of the rents, iſſues or profits thereof, or of any part or parts thereof, or by all or any ſuch way, ways or means whatſoever, of the ſum of 1000*l.* of lawful money of *Great Britain*, for ſuch daughter or daughters, to be equally divided between them (if more than one) payable to her or them reſpectively at her or their reſpective age or ages of twenty-one years, or marriage or marriages, whether ſhall firſt happen, for her or their reſpective portion or portions; and if any ſuch daughter or daughters ſhall happen to die (being more than one) before ſuch her or their reſpective time or times for being paid, then and in ſuch caſe the ſurvivor or ſurvivors of them ſhall have all her or their ſhare or ſhares thereof ſo dying; and if all of them ſhall happen to die before ſuch her or their reſpective age or ages, marriage or marriages, then and in ſuch caſe ſuch 1000*l.* or any part thereof, ſhall not be raiſed (if not raiſed before) but if raiſed, ſhall go and be paid and payable to him to whom the freehold of and in the premiſſes ſhall then, as herein is after mentioned, be in truſt for; and in caſe my ſaid ſon *T.* ſhall leave no ſon or daughter at the time of his death (born or unborn of his body) or if he ſhall have left a daughter or daughters, and the ſaid 1000*l.* ſhall in any wiſe as aforeſaid be raiſed, paid or ſatisfied, then and in ſuch caſe my will and meaning is, that the ſaid term of ninety-nine years ſhall, as to all other intents and purpoſes, be void and of none effect: provided alſo,

and

and my will and meaning is, that it ſhall and may be lawful to and for every ſuch of my ſaid ſons, to whom the truſt of the freehold of the ſaid premiſſes ſhall come (whilſt in his actual poſſeſſion) by any writing or writings indented, to be by him ſubſcribed and ſealed in the preſence of two or more credible witneſſes, to deviſe or leaſe all or any part of the ſaid manor, *&c.* to any perſon or perſons for any term or number of years not exceeding twenty-one years, to commence in poſſeſſion, and not in reverſion, reſerving upon every ſuch leaſe or leaſes, during the continuance of them reſpectively, the beſt improved yearly rent that can be got for the ſame (after the improvement made thereof) without any fine, or any thing to bate the rent, and ſo as ſuch leaſe or leaſes be not made diſpuniſhable of or for waſte.

And my will and meaning further is, that every or any ſuch of my ſaid ſons as ſhall be in the actual enjoyment of the ſaid manor of, *&c.* aforeſaid, ſhall and may aſſure, limit and appoint, by any deed in writing under his hand and ſeal, ſuch part or parcel of the ſaid manor of, *&c.* and other the premiſſes, as he ſhall think fit, unto or for a jointure for a wife for and during her natural life. *Item*, I give and bequeath to ſuch and every of my five young ſons *R. W. T. C.* and *J.* ſeverally, until they reſpectively ſhall attain their reſpective ages of nine years, the ſum of 60*l. per annum* of lawful

lawful money of *Great Britain*, and from thenceforth until they ſhall have reſpectively attained their reſpective ages of ſixteen years, the ſum of 100*l.* *per annum* of like lawful money; and from thenceforth until they ſhall have reſpectively attained their reſpective ages of eighteen years, the ſum of 150*l.* *per annum* of like lawful money; and from thenceforth until they ſhall reſpectively have attained their reſpective ages of twenty-one years, the ſum of 200*l.* *per annum* of like lawful money; the ſame to be paid to every of them reſpectively from time to time by my executors herein after-named, out of my real and perſonal eſtate, by equal quarterly payments on the four moſt uſual feaſt-days, commonly called *Lady-day*, *Midſummer-day*, *Michaelmas-day* and *Chriſtmas-day*, in and for the reſpective times being; the firſt payment thereof to commence and be made at and upon ſuch of the ſaid feaſt-days as ſhall happen next after my deceaſe. *Item*, I give and deviſe to *F.* my wife, *W. B. T. C.* and *H. L.* and to their heirs, all that manor of *R.* or by whatſoever name the ſame is called, with its rights, members and appurtenances; and alſo all other my meſſuages, lands, tenements and hereditaments whatſoever, with the appurtenances, in the county of *E.* upon truſt and confidence, and to the intent and purpoſe, that they the ſurvivor or ſurvivors of them or the heirs of ſuch ſurvivor, do and ſhall with all convenient ſpeed, after my ſon *W.* ſhall attain the age of

of twenty-one years, ſell to ſuch perſon or perſons as they my ſaid truſtees, or the ſurvivor or ſurvivors of them, or the heirs of ſuch ſurvivor, ſhall think fit; and all my ſaid manor of *R.* in the ſaid county of *E.* and alſo all other my meſſuages, lands, tenements and hereditaments whatſoever in the ſaid county of *E.* or any of them, or any part or parts thereof, with their appurtenances, and as ſoon after as conveniently they can lay out and diſpoſe of the money thereby ariſing, in and about the purchaſing of one or more annuity or annuities, rent or rents, or other yearly profits, for my ſaid four youngeſt ſons *W. T. C.* and *J.* or ſuch of them as ſhall be then living, in equal proportion (if more than one) for their reſpective life or lives, and in the meanwhile to allow him or them the rents, iſſues and other profits (if any) as well of ſuch manor, meſſuages, lands, tenements and hereditaments, as alſo of ſuch money; and whereas I have in the name of *G. P.* and *M. G.* both of *L.* (which ſaid *M. G.* is not dead) and alſo in the name of *R. H.* of *L.* obtained a grant under the great ſeal of *England*, after the death, ſurrender or forfeiture of *J. S.* of the office of ſurveyor of the petty cuſtoms and ſubſidies in the port of *L.* with all the fee and profits to the ſame belonging, for and during the natural lives of my ſons *R.* and *W.* and the life of the longer liver of them, or to ſuch like effect, as by ſuch grant, relation being thereunto

thereunto had, may more fully appear: and whereas I have granted unto *K. T.* out of the ſaid office, when it ſhall happen to come to me, the yearly ſum of 100*l. per ann.* to be paid to her the ſaid *K. T.* out of the profits of the ſaid office, when it ſhall happen to fall according to my ſaid grant made thereof to her; and alſo I give and deviſe all the truſts, benefits and other profits ariſing of and from the ſame, to my ſaid four younger ſons *W. T. C.* and *J.* or to ſuch of them as ſhall be living at my deceaſe or commencement of the ſaid grant, for all the term, eſtate and intereſt that I and my ſaid truſtees have and ought to have therein, equally between them; and in caſe any one or more of my ſaid four youngeſt ſons ſhall happen to die during the continuance of ſuch term or eſtate in the ſaid office, that then the whole profits ariſing by or from ſuch office ſhall equally go to and be divided amongſt the ſurvivors of my ſaid four youngeſt ſons; and in caſe three of my ſaid four youngeſt ſons ſhall die during the continuance of the ſaid term and intereſt, then I will and deviſe that the ſurvivor of them ſhall thenceforth have and enjoy the whole profits thereof to his own uſe. And whereas I am intereſted in a long term of years yet to come, of and in ſeveral annual payments, payable out of the revenue of exciſe, amounting in the whole to 300*l. per annum*, or thereabouts; and whereas by and by means of a certain indenture tripartite, bearing date on or about

the

the day of laſt paſt before the date hereof, and made or mentioned to be made between *J. T.* of, *&c.* in the county of *M.* of the firſt part, myſelf and *F.* my wife of the ſecond part, and *E. B.* of, *&c.* in the county of *G.* is ſettled for (amongſt other things) ſuch of my younger ſons *R. W. T. C.* and *J.* as ſhall attain his or their reſpective age or ages of twenty-one years, as by the ſaid indenture, relation being thereunto had, may appear; my will and meaning is, that the ſaid 300*l.* *per annum* ſhall be paid in equal portions to ſuch of my ſaid younger ſons *R. W. T. C.* and *J.* as ſhall have attained the age of twenty-one years, and ſhall not enjoy the ſaid eſtate of *F.* and elſewhere in the ſaid county of *G.* but if none of my ſaid younger ſons ſhall enjoy the ſaid eſtate of *F.* and elſewhere in the ſaid county of *G.* and ſhall not have attained that age, then ſuch ſon under that age ſhall not have his ſhare and proportions thereof until he hath attained that age; and that when ſuch of my ſaid younger ſons ſhall have attained the ſaid age of twenty-one years, and ſhall not enjoy the ſaid eſtate, and all other my ſaid younger ſons who ſhall attain the ſaid age of twenty-one years, and ſhall not enjoy the ſaid eſtate, ſhall, upon his attaining the ſaid age of twenty-one years, have his proportionable ſhare of the ſaid 300*l.* *per annum*; and alſo that when any of my ſaid younger ſons ſhall die under the ſaid age, or ſhall enjoy the ſaid eſtate, then my will and meaning is,

that

that his part ſo dying or enjoying the ſaid eſtate, ſhall go to and be equally divided amongſt the ſurvivors of my ſaid younger ſons, who ſhall have attained the ſaid age of twenty-one years, and ſhall not enjoy the ſaid eſtate, or if not then at that age, then when each of them reſpectively ſhall attain the ſaid age; the ſame to be paid to him or them in equal proportion. And my will and meaning is, that after the death of the ſurvivor of my younger ſons, I do give and bequeath the ſaid annual payment of 312*l.* for all the term and terms, time and times therein to come, to ſuch perſon who ſhall be then my heir at law. *Item*, I give and bequeath to my daughter *M.* 600*l.* to be paid her by my executors herein after named, at her day of marriage; and I do hereby will, order and direct my ſaid executors in the mean time to allowand pay her yearly for her maintenance and education, until ſhe ſhall attain the age of ten years, 40*l.* of lawful money of *Great Britain*, and from thenceforth until, *&c.* the ſame and ſuch other yearly ſums aforeſaid (payable to her) to be paid at ſuch four moſt uſual feaſt-days aforeſaidin the year, called, *&c.* by equal portions, in and for the reſpective times being, whereof the firſt payment to begin and be made upon the firſt of the ſaid quarter-days which ſhall happen after my deceaſe.

Item, I give and deviſe to *F. B.* gentleman, for his life, one annuity or yearly rent of 50*l. per annum*, to be iſſuing and payable

as

as well out of my manor of *A.* in the pariſh of *B.* in the county of *C.* as alſo out of the eſtate which I lately purchaſed of *R. P.* and his mother, or one of them, ſituate, lying and being in the pariſh of *R. S.* and *W.* ſome or one of them, in the county of *C.* or out of either of them, or any part or parts of them, or either of them, the ſame to be paid by two half-yearly payments; the firſt of the ſaid payments to begin at which of the feaſt-days of St. *Michael* the Archangel and the Annunciation of the bleſſed Virgin *Mary*, ſhall happen next after my deceaſe; and that when and as often as the ſame, or any part thereof, ſhall be behind and unpaid for the ſpace of twenty days next after any of the ſaid feaſt-days on which the ſame ought as aforeſaid to be paid (being lawfully demanded) that then and ſo often, and at any time or times then after, it ſhall and may be lawful to and for the ſaid *F. B.* into or upon the ſaid manor, meſſuages, lands, tenements, hereditaments and premiſſes chargeable therewith, or any or either of them, or any part or parts thereof, to enter and diſtrain, and ſuch diſtreſs and diſtreſſes to detain, keep and diſpoſe of as he ſhall think fit, until he ſhall be fully ſatiſfied and paid all ſuch arrearages, with the coſts and charges in and about the making, keeping and diſpoſing thereof.

And further, in caſe the huſband of my ſaid daughters, or either of them, or any perſon or perſons to whom any legacy or beneſit out of, from or by reaſon of this my will,

will, ſhall commence any ſuit or ſuits in any court of law or equity, or other court whatſoever, or by any ways or means ſue or diſturb, or cauſe to be ſued or diſturbed, my executors or truſtees herein named, or any other perſon or perſons whatſoever to whom any thing is by me given in this my will, from the receiving, quiet enjoying, and poſſeſſing of what is by me herein given as aforeſaid, and in ſuch manner as is therein mentioned; then my will and meaning is, that all and every the legacies herein by me given to the wife and child and children of ſuch huſband, either or any of them, and alſo to any other perſon or perſons whatſoever, or any of their truſtees, who ſhall ſo ſue and diſturb my ſaid executors in the due execution of this my will, ſhall ceaſe, determine and be utterly void; and that then and from thenceforth I do give and bequeath all and every the legacy and legacies which I had in this my will given to ſuch perſon or perſons, or in truſt for ſuch perſon or perſons, unto my ſaid grandſon *A. B.* his executors or adminiſtrators.

Alſo I will and ordain, that the executor of this my laſt will and teſtament, or his executors or adminiſtrators, for and towards the performance of my ſaid teſtament, ſhall with all convenient ſpeed after my deceaſe, bargain, ſell and alien in fee-ſimple all thoſe lands, *&c.* for the doing, executing and perfect finiſhing whereof, I do by theſe preſents give, grant, will and transfer to my ſaid executor,

executor, and to his executors and administrators, full power and authority to grant, alien, bargain, ſell, convey and aſſure all, *&c.* to any perſon or perſons, and their heirs for ever in fee-ſimple, by all and every ſuch lawful ways and means in the law, as to my ſaid executor, or to his executors or adminiſtrators, *&c.* or to his or their counſel learned in the law ſhall ſeem fit or neceſſary.

And all the reſt, reſidue and remainder of my goods and effects whatſoever I give, deviſe and bequeath the ſame unto and I hereby nominate and appoint executors of this my laſt will and teſtament; hereby revoking all former will and wills by me heretofore made. In witneſs whereof I have hereunto ſet my hand and ſeal this day of

A. B.

Signed, ſealed, publiſhed and declared by the above-named as and for his laſt will and teſtament, in the preſence of us who have hereunto ſubſcribed our names as witneſſes thereto, in the preſence of the ſaid teſtator, and in the preſence of each other.

C. D.
E. F.
G. H.

FINIS.

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Lu. R. T. O.